15

SUPREME COURT OF THE UNITED STATES.

No. ~~995~~ 208. 43. 44. 17
a 62. 4825

MILTON J. LUKINS and JOHN LINTON, App'ts,

vs.

THOMAS A. AIRD and NICHOLAS P. SPRING.

APPEAL FROM DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

GIDEON, Printer.

SUPREME COURT OF THE UNITED STATES.

No. 295.

MILTON J. LUKINS and JOHN LINTON, App'ts,

vs.

THOMAS A. AIRD and NICHOLAS P. SPRING.

APPEAL FROM DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Complaint	1	3
Interrogatories	13	8
Bond	22	12
Exhibit A	24	13
" B	27	14
" H	32	17
Answers	39	20
Amended Bill	65	31
Answers to Amended Bill	69	32
Replication	71	33
Orders of Court	72	34
Commissioners Appointed	77	36
Interrogatories	80	38
Deposition of John Gardner	86	40
" " Wm. W. Perry	91	43
" " John Rogers	95	45
" " Henry Beckle	98	46
" " Richard P. Pulliam	109	48
Transcript from Circuit Court, Sebastian Co.	115	55

	Original	Print.
Clerk Certificate, Sebastian Co.	121	58
Bill of Exceptions	127	61
Affidavit of Value	137	65
Decree	138	65
Appeal	139	66
Appeal Bond	140	66
Certificate	142	67

Pleas continued and held at the court-house in the city of Van Buren, the county of Crawford, within and for the Western District of Arkansas, before the Honorable Daniel Ringo, Judge of the District Court of the United States, for the District aforesaid, of the term of

State of Arkansas, *sct.*

In the District Court of the United States for the Western District of Arkansas, having Circuit Court jurisdiction.

In Chancery.

To the Honorable the Judge of the District Court of the United States for the Western District of Arkansas, in chancery sitting, and exercising equity jurisdiction.

Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, bring this their bill of complaint, against Thomas A. Aird and Nicholas P. Spring, who are citizens of the State of Arkansas, and of the county of Sebastian, within the said Western District thereof, defendants herein; and thereupon your orators declare and say:—

That William H. Norton, William W. Perry, and said defendant Thomas A. Aird, late partners in trade as merchants, doing business together as such by and under the firm, name, and style of "Norton, Perry, and Aird," being indebted to your orators and various other persons, and in failing circumstances, said defendant Aird designing to screen his individual property from the payment of the said partnership debts for which he was jointly liable, and to defraud his creditors, concerted and agreed with said defendant, Nicholas P. Spring, to convey to him two certain town lots situate in the city of Fort Smith, in said county of Sebastian, known and designated in and by the plot and survey of said city, as being lots numbered 5 and 6 respectively in block P, whereof he, the said Aird, was then seised in fee simple, for a nominal consideration of $2500, to be expressed in the deed of conveyance; and also to assign to him, the said Spring, for a nominal consideration of $350, a certain title bond bearing date the 29th of October, A. D. 1851, executed by one John Rogers to one Isaac T. Eppler, in the penal sum of $600, conditional that the obligor would convey to the obligée his heirs and assigns by deed, lots numbered 7, 8, and 9, in block P, situate in said city of Fort Smith, on payment of $300, the purchase money, according to the tenor and effect of six writings obligatory executed by the obligée to the obligor, to receive the payment thereof, which said bond he, the said Aird, then held under an assignment thereof to him from the said Eppler; and the said Aird caused a deed of conveyance to said lots numbered 5 and 6 to be

prepared accordingly, and the same was dated the 23d of November, A. D. 1853, and was executed by the said Aird on the day of the date thereof; and simultaneously with the execution of said deed, said Aird, by an endorsement on the back of said title bond under his hand and seal, bearing date the day and year last aforesaid, assigned the same to said Spring, the execution of which said deed and assignment was by the said Aird, on the day and year last aforesaid, duly acknowledged, and the same with the certificates of acknowledgment thereon endorsed, were afterwards duly recorded in the office of the Recorder of said county of Sebastian, wherein the said lots are situate, all which will more fully and at large appear by duly certified copies of said deed and assignment herewith exhibited; the former is marked "Exhibit A," and the latter "Exhibit B," and are prayed to be taken as part of this bill of complaint.

And your orators further represent that the said Nicholas P. Spring did not in fact pay to said Aird the said sums of money in said deed and assignment respectively expressed, and the said deed and assignment was so made in order to prevent the just creditors of the said Aird from subjecting said lots to the payment of their debts, and that the said Spring might hold the same in trust for the said Aird or some part of his family, or for the benefit of both the said defendants.

And your orators further represent that a dwelling-house and other improvements are erected upon the said lots numbered 5 and 6, which are in the occupation of said Aird and his family at the time of the execution of said deed, and that they have continued in the possession and occupancy thereof by and with the knowledge and assent of the said Spring from thence hitherto free of rent.

And your orators further represent that $2500, the consideration in said deed expressed, is more than the said lots numbered 5 and 6, with the appurtenances, were really worth at the time of the execution of said deed, or at any subsequent period; though they are now worth exceeding $5000, and that said Spring was about that time in embarrassed circumstances, and paying a high rate of interest on borrowed moneys; besides he did not obtain or contract for the relinquishment of dower in said lots by the wife of said Aird.

And your orators further represent that on the 3d day of August, A. D. 1854, in the term of August in said year, one Richard P. Pulliam, as assignee of your orator, Milton J. Lukins, in the Circuit Court in and for said county of Sebastian, and State of Arkansas, in a certain action of debt therein pending, founded upon a promissory note bearing date the 12th of March, A. D. 1853, drawn by said Norton Perry and Aird in favor of your orator, Milton J. Lukins, for the payment of $839 23, six months after the date thereof, and endorsed by your orator, Milton J. Lukins, to said Pulliam, by the consideration and judgment of that court recovered against said

Norton, Perry and Aird, as well the sum of $839 23 for his debts, and $98 for his damages, as also all his costs in and about that suit in that behalf laid out and expended; and that on the same day and at the same time, the said Pulliam, as assignee of Messrs. Wilmer & Brother & Co., in a certain other action of debt then there pending by the consideration and judgment of said court, recovered against the said Norton, Perry and Aird, as well the sum of $1549 29 for his debt, and $82 60 for his damages, as also all his costs in and about the last mentioned suit, laid out and expended: all which will more fully appear by duly authenticated copies of the records of said judgments herewith exhibited, marked "Exhibit C," and prayed to be taken as part of this bill of complaint.

And your orators further represent that the said judgments so recovered in manner aforesaid, remaining unpaid and unsatisfied, the said Richard P. Pulliam, on the 18th day of December, in the same year, for the purpose of obtaining satisfaction of his said judgments, sued and prosecuted out of the office of the clerk of said Circuit Court, writs of *fieri facias* on said judgments, under the seal of said court, and attested by its clerk, by which said writs the State of Arkansas executed the judgments aforesaid, and commanded the sheriff of said county of Sebastian, to whom they were directed, that the goods and chattels, lands and tenements of the said Norton, Perry and Aird, he should cause to be made the debts, damages, and costs aforesaid, and have the same before the said court on the second day of the next term of said court, and then and there certify how he had executed the same, which said writs on the same day they issued, came to the hands of the said sheriff of Sebastian County, to be executed in due form of law; and was by him levied upon, among other real estate, the said lots numbered 5, 6, 7, 8 and 9, and after having duly advertised the same for sale, the said sheriff offered them for sale for cash in hand at public auction to the last and highest bidder, at the court-house door of said county of Sebastian, on the 19th day of February, A. D. 1855 (it being on the first day of the term of said court held next after the issuance of said writs), between the hours for judicial sales, when your orators being the last and highest bidders, therefore purchased the same for the sum of $422, that is to say, for lot number 5, $175; for lot number 6, $160; for lot number 7, $2; for lot number 8, $10, and for lot number 9, $75; which said sum of $422 was paid by your orators to said sheriff, all which, by copies of said writs and their endorsements and returns, herewith exhibited, marked Exhibit F, and prayed to be taken as part of this bill, will more fully and at large appear.

And on the 24th day of February, A. D. 1855, the said sheriff, Coleman Norris, executed a deed to your orators, whereby, after reciting the names of the parties to said writs, the dates when issued, the dates of the said judgments, and all other particulars recited in said writs, together with a description of the time, place, and manner of

said sale, he, as such sheriff, bargained, granted, sold, and conveyed, for the consideration of $453 therein expressed (the receipt whereof is thereby acknowledged), to your orators, their heirs and assigns, all the right, title, interest, claim, and demand which the said Norton, Perry, and Aird, or either of them, had or held in or to the said lots numbered 5, 6, 7, 8, and 9, at the time of the rendition of said judgments; the execution of which said deed was, on the same day of its execution, duly acknowledged in open court before the Judge of said Circuit Court judicially setting by the said sheriff, and the same was entered in the minutes of said court, with the names of the parties to the suit, and a description of the property thereby conveyed; and the said deed with the certificate of acknowledgment thereon endorsed was duly recorded in the office of the Recorder of said county of Sebastian, and the day of its execution; all of which will more fully and at large appear by the said deed and the certificates of acknowledgment and record thereon endorsed herewith exhibited, marked "Exhibit II," and prayed to be taken as part of this bill of complaint.

And your orators further represent that at the February Term, A. D. 1855, of said Circuit Court of Sebastian County, the said Aird and his family still remaining in possession of said lots numbered 5 and 6, and refusing to surrender the possession thereof to your orators, your orators by their attorneys made application to said court by petition for an order directing the sheriff to put your orators in possession thereof; and such proceedings were thereupon had, that and order was made by said court ordering and directing said sheriff to put your orators in possession thereof, and on the hearing of said application the said Spring appeared by his attorneys and opposed the same, and setting up a title to said lots under the said deed of conveyance executed to him by said Aird in the manner hereinbefore set forth assumed to be the owner thereof.

And your orators further represent that said Spring threatens to institute suit at law for the recovery of the possession of said lots 5 and 6, as soon as your orators or their agents or tenants shall take possession; and his apparent title is a cloud on the title of your orators.

And your orators further represents unto your honor that they have, by their attorneys, repeatedly applied to the said Spring and requested him to deliver up said deed of conveyance and assignments executed to him by said Aird to be cancelled; with which just and reasonable request your orators well hoped would have been complied with as in equity and justice ought to have been done. But now so it is, may it please your honor, that the said defendants in concert with each other allege that the debts upon which said judgments were rendered were contracted subsequent to the passage of the act of the General Assembly of the State of Arkansas, exempting homesteads from execution, and that said lots numbered 5 and 6, being the homesteads of said Aird, were not

subject to sale under said writs of fieri facias; whereas your orators charge that said debts were contracted long before the passage of that act. And at other times they pretend that said Spring duly paid the considerations of $2,500 and $350 in said deed of conveyance and assignment executed by said Aird at the time of the execution thereof; whereas your orators charge the contrary thereof to be the truth.

And your orators further charge that the said Spring was pressed for money and in poor circumstances, and had not at that time a sum of $2,850 in his possession or power. And the said Spring refuses to set forth in what manner he paid the said sums of $2,500 and $350, and when and from whom he received or obtained the same, or by what means he was enabled to make such payments. And at other times the said Spring pretends that the said Aird was indebted to him at the time of executing said deed and assignment in a large amount, and that said deed and assignment was executed by said Aird in consideration of the said debt, but when and how the said Aird so became indebted to him he refuses to discover.

And your orators charge that if said Aird had at any time been indebted to the said Spring, he had by some means fully satisfied the said debt.

And your orators further charge that in case any consideration whatsoever was ever paid by said Spring or any other person or persons to the said Aird for said deed to lots numbered 5 and 6, and the assignment of said title bonds, but which your orators do not admit, the whole or some part thereof was returned to the said Spring or to some other person for him by the said Aird or some one for him, or that the said Spring was in some manner repaid the same, and such consideration was merely colorable.

And your orators further charge that the said Aird first proposed to the said Spring the execution of said deed of conveyance and assignment, and that said Spring, at the time the same were executed, was security for the said firm of Norton, Perry & Aird, for a large amount, and knew, or believed, or had some reason to know, believe, or suspect that said firm, or the subsequent firm of Perry & Aird, of which said Aird was a member, was in embarrassed circumstances and was about to fail in business, and the said Spring accepted such deed and assignment with a view to the advantage of said Aird or his family.

And your orators charge, that it was agreed or understood that said Spring was not to hold the said lots for his own sole benfit, and as his own sole property.

And your orators further charge, that on the day on which said deed and assignment were executed, the said Spring borrowed or obtained from Messrs. Sutton, Griffith & Co., of Fort Smith, or one of their clerks, a sum of money, and at the same time stated that he wanted it to pay the said Aird for the property he had purchased of him, meaning the said lots, and that he would return the

said sum in short time; and that on the same day, and immediately thereafter, the said Spring returned the identical same money to Messrs. Sutton, Griffith & Co., or one of their clerks, and remarked at the time of returning it, in the presence of Richard P. Pulliam, Esquire, and several other persons there present, that he, the said Spring, had managed to do without it, meaning that he had effected the purchase of said lots from said Aird without using the money he had borrowed for that purpose.

And your orators are advised and humbly insist, that the execution of said deed and assignment by the said Aird to the said Spring, was a gross fraud upon the fair and first creditors of the said Aird, and of said firm of Norton, Perry & Aird, and ought therefore to be set aside and delivered up to be cancelled. All which actings, doings, pretences, and refusals are contrary to equity, and tends to the wrong and injury of your orators in the premises. In consideration whereof, and forasmuch as your orators can only have adequate remedy in a court of equity; to the end therefore that the defendants may upon their respective corporal oaths answer the matters aforesaid. And that the said deed of conveyance and assingment executed by said Aird to said Spring be declared void, as fraudulent against the creditors of said Aird and your orators, and that said Spring be decreed to deliver up the same to your orators to be cancelled. And that your orators may have such other or further relief in the premises as they may be entitled to.

Your orators pray for process of subpœna in chancery to be directed to defendants Thomas A. Aird and Nicholas P. Spring, &c.

Note—

Interrogatory 1st. Was defendant Aird one of the partners composing the firm of Norton, Perry & Aird?

Interrogatory 2d. Did the said firm of Norton, Perry and Aird, or the firm of Perry & Aird, fail in business? If yea, state when they failed, and whether all the members of their firm are not now insolvent and unable to pay their debts.

Interrogatory 3d. Where the debts upon which the judgments obtained by Richard P. Pulliam against said Norton, Perry and Aird, hereinbefore mentioned and set forth, contracted or created prior to the execution of the deed of conveyance and assignment by said Aird to said Spring hereinbefore mentioned, and to the passage of the act of the legislature of Arkansas, exempting homesteads from execution?

Interrogatory 4th. Who first proposed the execution of said deed and assignment or the sale of the said lots, and what was said respecting the same, and whether any reason was given by either party for desiring to sell or purchase the said lot?

Interrogatory 5th. By whom and at whose instance, or under whose direction, were the said deed and assignment prepared or drafted; and what, if any, directions were given to the draftsman respecting the consideration to be therein expressed?

Interrogatory 6th. Was the said firm of Norton, Perry & Aird, or the defendant Aird, in embarrassed circumstances at or about the time of the execution of said deed and assignment by said Aird to said Spring, or was a failure anticipated or apprehended by them, or either and which of them?

Interrogatory 7th. Did you know or believe, or have any reason to know, believe, or suspect, that said Aird or his partners in business were in embarrassed circumstances, or where apprehensive of becoming involved in debt or reduced to insolvency, at the time the proposition was first made to sell or purchase said lots?

Interrogatory 8th. Did you know or believe, or had you any reason to know, believe, or suspect, that in the proposition to sell, or in making the said conveyances, the said Aird was actuated by a desire to put the said lots beyond the reach of his creditors, or those of the firm of Norton, Perry & Aird, in the event of a failure or reverses in business, or to secure the said property for the benefit of his family?

Interrogatory 9th. Was said Aird and his family in possession of said lots numbered 5 and 6 at the time of the execution of the said deed by him to said Spring? If yea, state what, if anything, was said at the time of the execution of the deed, or at any other time before then, respecting the delivery of the possession thereof by said Aird. And whether said Aird and his family have not continued in possession thereof ever since, with the assent of said Spring? And whether he has ever paid rent for the same during the whole time he has occupied them, and the amount, if anything, he has paid, and how and in what way and when was any such payment or payments made?

Interrogatory 10th. Had defendant, Aird, a wife living at the time of the execution of said deed and assignment to said Spring? If yea, state whether anything was said respecting the relinquishment of her dower to said lots; and if so, what was said respecting the same, and the reason why the wife did not join the husband in the execution of the said deed.

Interrogatory 11th. What was the real cash value of said lots 5 and 6, with the appurtenances thereunto belonging at the time of the execution of the said deed, and what was said Spring's object in making the purchase? Was it because he thought the property cheap at $2,500, and had the money to invest?

Interrogatory 12th. Was said Spring pressed for money, or have present use for all he could command to meet his liabilities about that time? and did he not at that time owe borrowed money for the use of which he payed or was to pay interest at the rate of ten per centum per annum, or some other large rate of interest?

Interrogatory 13th. Did said Spring have $2,850 in actual cash in his possession at the time of the execution of the said deed by said Aird to him?

Interrogatory 14th. State in what manner said Spring paid the

sum of $2,500 and $350 expressed in said deed and assignment respectively, and when and from whom he received or obtained them, and by what means he was enabled to make such payments.

Interrogatory 15th. Was the said Aird indebted to said Spring at the time of the sale of said lots or the execution of said conveyance? If so, state whether such indebtedness constituted all or any part of the consideration for the same, and set forth the amount thereof and the time when and how he became so indebted, and whether the same or any part thereof has been since paid or satisfied.

Interrogatory 16th. Did the said Spring actually and in good faith, and plain downright earnest, pay the said Aird the sums of $2,500 and $350, the considerations expressed in said deed and assignment? and was the money, if any really did pass from Spring to Aird, returned to said Spring or to some other person for him, or was the said Spring in some manner repaid the same?

Interrogatory 17th. Did said Spring borrow or obtain from Messrs. Sutton, Griffith & Co., of Fort Smith, or one of their clerks, a sum of money on the day of the execution, or of the acknowledgment of said deed by said Aird for the purpose of making a colorable payment to said Aird, *or for any other and what purpose?* and did he not state at the time he obtained it that it was to pay to said Aird? and did he not, on the same day, *return the same money to said Sutton, Griffith, & Co., or to one of their clerks*, and remark at the same time that he had managed to do without it, or make some other remark of the like or some clear import?

Interrogatory 18th. Did said Spring pay said Aird any money in the office of the Clerk of the Sebastian Circuit Court on the day the acknowledgment of said Aird was taken by said clerk of the execution of said deed? If yea, state whether the money then paid was not the *same money which he had gotten at Sutton, Griffith & Co.*, and whether he actually delivered or paid it to said Aird; and if yea, state whether *Aird did not hand him back the same money.*

Interrogatory 19th. Did said Aird have any money belonging to himself or to any other person on deposit in the house of said Sutton, Griffith & Co., at the time said Spring called to borrow or to get the money he took to the clerk's office at the time said Aird acknowledged the execution of said deed? If yea, state the amount and whether the same or some part thereof was not placed there by said Aird or some other person for the purpose of being used in making the said payments.

Interrogatory 20th. Did said Aird, or any other person for him, supply said Spring, or any other person, with any part of the money paid by Spring to Aird for said lots?

Interrogatory 21st. Was it agreed or understood at any time before, or at the time of the execution of said deed and assignment by said Aird, that said Spring was not to hold the said lots for his own sole benefit and as his own property? Or is it now, or has it

at any time since the execution of said instrument, been the understanding that said Spring holds the said lots or some of them in trust for said Aird or for some one of his family, or that said Spring is to reconvey the said lots or some of them back to said Aird or to his wife, or to some one in trust for her, or to such person as said Aird or his wife may direct or request?

Interrogatory 22d. Did Aird in any manner give said Spring to understand that he expected him to reconvey said lots or either of them to him or his wife at some future day?

Interrogatory 23d. Is there in existence at this time, or ever was, a paper writing executed by said Spring, which was designed or intended to show the true character of the transaction between Aird and himself, or which has any reference to the said lots or said deed, or which would, if produced, tend in the slightest degree to show that said deed was intended to create a trust or was intended as a conditional conveyance or a mortgage? If so, set it forth.

Interrogatory 24th. Did said Spring give to said Aird, or to any other person for him, anything in writing respecting said lots or any of them, or the improvements thereon situate? If yea, set it forth.

Interrogatory 25th. Did said Spring or any other person for him, or with his knowledge, apply to John Gardner, of Fort Smith, to attend the sale of said lots under said execution, and bid them in? Or did said Gardner bid for said lots in pursuance of or in obediance to the request of said Spring or said Aird, or of any other person for them or either of them?

Interrogatory 26th. Was defendant Spring one of the securities of Perry and Aird in an obligation executed by them to Norton for the payment of the debts of Norton, Perry and Aird? If so, state whether the said deed and assignment, or either of them, was executed or designed as an indemnity against said Spring's liabilities upon said obligation, and whether or no said obligation has not been cancelled.

Interrogatory 27th. Has any improvements been erected or put upon lots 5 and 6 or either of them, or upon any of the buildings thereon, since the execution of the deed for them to said Spring? If yea, state at whose expense they were made, and whether said Spring was previously consulted in reference thereto.

Interrogatory 28th. Who has paid the taxes on said lots since 1853? If paid by Spring, state whether Aird has paid or is to pay him the same.

Interrogatory 29th. Did you expect to leave Fort Smith when you proposed or agreed to sell your residence to Spring? If not, state whether you had provided for another residence for your family.

Interrogatory 30th. Did you expect to get a reconveyance from

said Spring after settling the debts of Norton, Perry & Aird, of said lots or either of them?

Interrogatory 31st. Was it your understanding that Spring was to hold said lots absolutely as his own sole property, or that he would reconvey the same to you or some member of your family, or to some other person as you might direct?

Interrogatory 32d. Did you ever pay Spring rent for said lots? If so, state how much and the time or times the same were paid, and produce the receipts therefor if any you have, and state when they were given and whether they are antedated?

Interrogatory 33d. Did Perry & Aird make an assignment of their effects for the benefit of their creditors? If yea, state when such assignment was made, and whether or no it was in contemplation at or before the execution of the deed to Spring, and whether or no the consideration received from said Spring or any part thereof was embraced by the assignment made for the benefit of the creditors.

Interrogatory 34th. Did said Spring know or believe, or have any reason to suspect or believe that an assignment for the benefit of their creditors was going to be made at any time before he bought said lots, or that such assignment was in contemplation?

Interrogatory 35th. Did defendant Aird offer or propose to sell said lots to any one but said Spring, or either of said lots, at any time prior to the sale to Spring? If yea, state when such offer or proposition was made, and to whom made.

NOTE.—Defendant Thomas A. Aird is required to answer all of the foregoing interrogatories except those numbered 7th, 8th, 11th, 12th, and 13th.

Defendant Spring is required to answer all of said interrogatories except those numbered 29, 30, 31, 32, and 35.

WALKER & GREEN,
Solicitors for Complainants.

I, William Walker, do hereby acknowledge myself bound unto Thomas A. Aird and Nicholas P. Spring, the defendants in the foregoing bill of complaint named, for the payment of all the costs for which Lukins and Linton, the complainants therein named, may be liable in said suit.

Witness my hand and seal this 5th day of November, A. D. 1856.

W. WALKER. [SEAL.]

We, Thomas A. Aird and Nicholas P. Spring, the defendants in the foregoing bill of complaint of Milton J. Lukins and John Linton, do hereby consent to waive service of processes and to enter our respective appearance to said bill on the second Monday of the November Term, A. D. 1855, of the District Court of the United States for the Western District of Arkansas; and we do hereby constitute Alexander McLean, the clerk of said District Court, our attorney in fact for us and in our names and stead to enter our

appearance to said bill on said second Monday of said term of said court. Hereby ratifying and conforming the entry of our said appearance which may be made for us in said case by our said attorney.

Witness our hands and seals, this 4th day of November, A. D. 1855. [SEAL.]
[SEAL.]

Exhibit (A).

Know all men by these presents, that I, Thomas A. Aird, of the city of Fort Smith, in the State of Arkansas, in consideration of two thousand five hundred dollars to me in hand paid by Nicholas Spring, of the city of Fort Smith, in the State of Arkansas (the receipt whereof is hereby acknowledged), do hereby give, grant, bargain, sell, and convey, unto the said Nicholas Spring and his heirs, the following described lots or parcels of ground lying in and composing a part of said city of Fort Smith, and described on the plat and plan of said city as follows, to wit: Lots numbers five and six (Nos. 5 and 6), fronting one hundred feet on Howard Street, and running back one hundred and forty feet to an alley. Lot number six (6), being a corner lot as marked and designated in block P, of the city of Fort Smith, State of Arkansas; also lots numbers one and two (1 and 2), fronting one hundred feet on Howard Street, and running back one hundred and forty feet to an alley. Lot number one (1), being a corner lot as the same are marked, described, and designated in the plat and plan of said city, and of the dimensions and boundaries therein specified, with all the privileges and appurtenances thereto belonging. To have and to hold the afore granted premises to the said Nicholas Spring and his heirs forever in fee simple. And I, the said Thomas A. Aird, for myself and my heirs, executors, and administrators, do covenant with the said Nicholas Spring and his heirs and assigns, that I am lawfully seised in fee of the afore granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said Nicholas Spring as aforesaid, and that I will and my heirs, executors, and administrators, shall warrant and defend the same to the said Nicholas Spring and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Thomas A. Aird, have hereunto set my hand and seal, this 23d day of November, A. D. 1853.

THOMAS A. AIRD. [SEAL.]

State of Arkansas, County of Sebastian.

Be it remembered, that on this twenty-third day of November, A. D. 1853, at the county of Sebastian, Arkansas, before me, John Carnall, Clerk of the Circuit Court in and for said county, personally came Thomas A. Aird, grantor in the foregoing deed, to me

well known, and in my presence acknowledged that he voluntarily executed and delivered the foregoing deed for the uses, purposes, and consideration therein expressed and desired the same to be certified for record.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office at F't Smith, the day and year aforesaid.

[L. S.] JOHN CARNALL, Clerk.

State of Arkansas, County of Sebastian, *ss.*

I, John Carnall, Clerk of the Circuit Court, and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 23d day of November, A. D. 1853, and the same is now duly recorded in Record Book A, page 710.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at Fort Smith, the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-three.

[L. S.] JOHN CARNALL, Clerk and ex-officio Recorder.

State of Arkansas, County of Sebastian, *ss.*

I, John Carnall, Clerk of the Circuit Court and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing is truly, correctly, and perfectly transcribed from the record of the same, now in my office in Record Book "A," page 710.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Fort Smith, this 6th day of October, in the year of our Lord one thousand eight hundred and fifty-four.

[L. S.] JOHN CARNALL, Clerk and ex-officio Recorder.

Exhibit (B).

Know all men by these presents, that I, John Rogers, am held and firmly bound unto Isaac T. Eppler, his heirs and assigns in the penal sum of six hundred dollars good and lawful money, for the payment of which well and truly to be made and done I bind myself, my heirs, executors, and administrators, firmly by these presents, signed with my hand and sealed with my seal, and dated this 29th day of October, A. D. 1851. The condition of the above obligation is such that whereas the above bounden John Rogers hath this day bargained and sold, and doth by these presents bargain and sell unto the said Isaac T. Eppler, his heirs and assigns, the following described lots in the city of Fort Smith, to wit: lots numbers seven, eight, and nine (No. 7, 8, and 9), in block letter P (letter P), measuring each fifty (50) feet front on Knox Street, by one hundred and forty (140) feet deep to an alley, as the same is marked, designated and described in the plat and plan of said city, duly recorded in the clerk's office of the county of Crawford in the State of Ar-

kansas, for the consideration of three hundred dollars, is secured by six several writings obligatories executed by the said Isaac T. Eppler to the above bounden John Rogers, the first dated the 29th day of October, A. D. 1851, and payable six months after date; the second dated the 29th day of October, A. D. 1851, and payable twelve months after date; the third dated the 29th day of October, A. D. 1851, and payable eighteen months after date; the fourth dated the 29th day of October, A. D. 1851, and payable twenty-four months after date; the fifth *day* the 29th day of October, A. D. 1851, and payable thirty months after date; and the sixth dated the 29th day of October, A. D. 1851, and payable thirty-six months after date, all bearing interest at the rate of ten per cent. per annum. Now if the above bounden John Rogers shall well and truly make, execute, and acknowledge and deliver, a good and absolute deed in fee simple to said Isaac T. Eppler, his heirs and assigns, for the above described lots of land situate as aforesaid, provided, however, the said Isaac T. Eppler shall first fully pay, satisfy, and discharge, the said several writings obligatory according to the tenor and effect thereof, then the above obligation to be null and void, otherwise to remain in full force and virtue. This the day and year first above written. JOHN ROGERS. [SEAL.]

Witness present,
J. R. KANNADY,
JOHN STRYKER.

N. B. The words six, seven, and eight, were erased by marks drawn across them in the 11th line above, and the words seven, eight, nine, written above them, & figures "6, 7, & 8," in same line were changed to 7, 8, & 9, all in the handwriting of John Rogers the drawer of the instrument. RECORDER.

Know all men by these presents, that I, Isaac T. Eppler, of the *city* of Fort Smith, in the county of Sebastian, in the State of Arkansas, do hereby set over, transfer, and assign all my title, interest, and claim of the lots and pieces of ground mentioned and described in this title bond, for value received, to Thomas A. Aird of the same place, and I, the said Isaac T. Eppler, do hereby authorize and direct the said John Rogers to make, execute, and deliver unto the said Thomas A. Aird a full and complete deed of general warranty therefore, upon the payment of the consideration money due thereon, which payment I hereby bind and obligate myself to make to the said John Rogers; and I, the said Isaac T. Eppler, do hereby bind myself to pay to said Rogers the entire amount due him on the within mentioned and described lots.

Witness my hand and seal this 12th day of October, eighteen hundred and fifty-two. ISA'C T. EPPLER. [SEAL.]

Executed and delivered in the presence of us,
E. RECTOR,
J. C. RECTOR.

Know all men by these presents, that I, Thomas A. Aird, for and in consideration of three hundred and fifty dollars to me in hand paid by Nicholas Spring, of the city of Fort Smith, in the county of Sebastian, and State of Arkansas, the receipt whereof is hereby acknowledged, have sold and assigned, and by these presents do sell and assign to the said Nicholas Spring the annexed and foregoing instrument of writing and all my right, title, claim, and interest in and to the same, authorizing him to enforce the same according to the tenor thereof.

In witness whereof I have hereunto set my hand and seal this 23d day of November, A. D. 1853.

THOS. A. AIRD. [SEAL.]

State of Arkansas, County of Sebastian.

Personally appeared before me, John Carnall, Clerk of the Circuit Court in and for said county, the 23d day of November, A. D. 1853, Thomas A. Aird, whose name appears to the above acknowledgment, and acknowledged that he executed the above assignment of the title bond hereto annexed, for the uses, purposes, and consideration therein expressed, and desired the same to be certified.

Witness my hand and the seal of said court, this 23d day of November, A. D. 1853.

[L. S.] JOHN CARNALL, Clerk.

State of Arkansas, County of Sebastian.

I, John Carnall, Clerk of the Circuit Court, and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 23d day of November, A. D. 1853, and the same is now duly recorded in record book A, pages 711 & 712.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Fort Smith, the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-three.

[L. S.] JOHN CARNALL,
Clerk and ex-officio Recorder.

State of Arkansas, County of Sebastian, *ss.*

I, John Carnall, Clerk of the Circuit Court and ex-officio Recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing is truly and correctly transcribed from the record of the same now in my office in Record Book "A," pages 711 and 712.

In testimony whereof I have hereunto set my hand and affixed seal of my office at Fort Smith, this 6th day of October, in the year of our Lord one thousand eight hundred and fifty-four.

JOHN CARNALL,
Clerk and ex-officio Recorder.

Exhibit (H.)

To all persons to whom these presents shall come, Coleman Norris, Sheriff of Sebastian County, in the State of Arkansas, send greeting:—

Whereas heretofore, to wit, on the third day of August, A. D. eighteen hundred and fifty-four, at the August term of that year of the Circuit Court of said county of Sebastian, in a certain action then pending in that court, wherein Richard P. Pulliam, assignee of Milton J. Lukins, was plaintiff, and William H. Norton, William W. Perry, and Thomas A. Aird, late merchants and partners in trade, trading, &c., under the names, style, and firm of Norton, Perry & Aird, and defendants; the said Richard P. Pulliam, assignee as aforesaid, by the consideration and judgments of said court, recovered against the said Norton, Perry, and Aird, as well the sum of eight hundred and thirty-nine dollars and twenty-three cents for his debt, and forty-one dollars and ninety-eight cents for his damages, as also all their costs in that suit expended; taxed at the sum of four dollars and seventy-four cents. And whereas, on the same day and at the same time of said Circuit Court the said Richard P. Pulliam, as assignee of Wilmer, Brother & Co., in a certain other action therein pending, by the consideration and judgment of said court, recovered against the said Norton, Perry & Aird, as well the sum of one thousand five hundred and forty-nine dollars and twenty-nine cents for his debt, and eighty-two dollars and sixty cents for their damages, as also all his costs in that suit expended, taxed at the sum of four dollars and ninety-nine cents, on which judgments writs of execution were issued on the eighteenth day of December, of the same year (1854), directed to me, the said Coleman Norris, to be levied, satisfied, and executed. And whereas, by virtue of said writs of execution, and in order to satisfy the same, I did afterwards, on the twenty-sixth day of December, of the year aforesaid, take and seize the following described real estate, to wit: all these certain tracts or parcels of land situate, lying, and being in said county of Sebastian, known and designated in and by the surveys of the public lands of the United States as being the northeast fractional quarter of section one, and the south half of the northeast quarter of fractional section two, in township seven north, of range thirty-one west, containing together one hundred and sixty acres more or less; the northwest fractional quarter of section twenty-nine in township eight north, of range thirty-one west, containing twenty-seven acres and forty-nine one-hundredths of an acre; and the following town lots situate, lying, and being in the city of Fort Smith, in said county of Sebastian, to wit: lots numbered, respectively, one, two, five, six, seven, eight, and nine, in block letter P, as known and designated in and by the plat of said city of Fort Smith. And whereas, after having duly and in due form of law advertised the said several tracts of land

and town lots for sale, I did, on the nineteenth day of February, A. D. eighteen hundred and fifty-five (it being the first day of the term of said court held next after the issuance of said writs of execution), between the hours prescribed by law, offer them for sale separately at public auction for ready money at the court-house door of said county of Sebastian, when Milton J. Lukins and John Linton became the purchasers thereof at the following prices, to wit: For the N. E. frac'l qr. of sec. one, $1; for the south half of the northeast qr. of frac'l sec. ten, $10; for the northwest frac'l qr. of sec. twenty-nine, $10; for lot numbered one, $5; for lot numbered two, $5; for lot numbered five, $175; for lot numbered six, $160; for lot numbered seven, $2; for lot numbered eight, $10; and for lot numbered nine, $75; which said several sums amount in the aggregate to the sum of four hundred and fifty-three dollars, and were the highest and best bids then and there made for the said several tracts of land and town lots. Now, therefore, know ye, that I, the said Coleman Norris, in my capacity of sheriff as aforesaid, in consideration of the said sum of four hundred and fifty-three dollars to me paid by the Milton J. Lukins and John Linton, the receipt whereof is hereby acknowledged, have bargained, granted, sold, and conveyed, and by these presents I do bargain, grant, and sell to the said Milton J. Lukins and John Linton all the right to title, interest, claim, and demand, which the said Norton, Perry, and Aird, or either of them had or held in or to the said several tracts or parcels of land and town lots at the time of the rendition of said judgments, to have and to hold the same to them, the said Lukins and Linton, their heirs, executors, administrators, and assigns, to their use and behoof forever; and I, the said Coleman Norris, do covenant with the said Lukins and Linton, that in making the levy and sale aforesaid, I have complied with, observed, and obeyed, all the rules and requisitions in law for an execution making sales of real estate.

In testimony whereof I, the said Coleman Norris, as sheriff of said county of Sebastian, have hereunto subscribed my name and affixed my seal this twenty 24th day of February, A. D. eighteen hundred and fifty-five.

COLEMAN NORRIS, [SEAL.]
Sh'ff of Sebastian Co., Ark.

State of Arkansas, County of Sebastian.

In the Circuit Court of said county February term, A. D. 1855, February 24th, 1855, amongst others were the following proceedings had, to wit:—

This day personally appeared here in open court Coleman Norris, sheriff of said county of Sebastian, and produced a deed of conveyance bearing date the 24th day of February, A. D. 1855, whereby, after reciting the issuance of two writs of execution out of this court on the eighteenth day of December, A. D. 1854, the one on a

judgment recovered in this court in an action then pending herein by Richard P. Pulliam, assignee of Milton J. Lukins, plaintiff therein, against William H. Norton, William W. Perry, and Thomas A. Aird, late merchants and partners in trade, trading, &c., under the name, style, and firm of Norton, Perry & Aird, the defendants therein, on the third day of August, A. D. 1854, at the August term of that year, for $839 23 debt, and $41 98 damages, and costs of suit taxed at the sum of $4 74; and the other on a judgment recovered in this court on the same day by Richard P. Pulliam, as assignee of Wilmer, Brother & Co., against the said Norton, Perry & Aird for $1549 29 debt, $82 60 damages, and costs taxed at $4 99, and the levy upon and sale of the northeast fractional quarter of section one, and the south half of the northeast quarter of fractional section ten in township seven north of range thirty-one west, the northwest fractional quarter of section twenty-nine in township eight north of range thirty-one west, containing $27\frac{49}{100}$ acres, and lots numbered respectively one, two, five, six, seven, eight, and nine, in block letter P, as known and designated in and by the plat of the city of Fort Smith, situate, lying, and being in said city, in said county of Sebastian, at the court-house door, in said county, on the first day of the present term of the court, to satisfy said execution to Milton J. Lukins and John Linton for $453, he, the said Coleman Norris, in his capacity of sheriff of said county of Sebastian, bargained, granted, sold, and conveyed, all the right, title, interest, claim, and demand, which the said Norton, Perry, and Aird, or either of them, had or held in or to the aforesaid tracts or parcels of land or town lots at the time of the rendition of said judgments, and acknowledged, declared, and stated, that he, as sheriff aforesaid, had executed, signed, sealed, and delivered, the said deed for the uses, purposes, and consideration therein expressed and set forth, and desired the same to be certified, which is accordingly ordered to be done.

State of Arkansas, County of Sebastian.

I, John Carnall, clerk of the Circuit Court in and for said county of Sebastian, do hereby certify that the above and foregoing acknowledgment is truly and correctly transcribed from the Circuit Court Record Book A, or vol. 1.

Witness my hand and the seal of said court this 24th day of February, A. D. 1855.

[L. S.] JOHN CARNALL, Clerk,
By JAS. H. GARDNER, Deputy.

State of Arkansas, County of Sebastian.

I, John Carnall, clerk of the Circuit Court, and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 24th day of February, A. D. 1855, and the same is now duly recorded in Record Book B, pages 323, 324, & 325, and 326.

In testimony whereof I have hereunto set my hand and affixed the seal of my office at Fort Smith, the 24th day of February, in the year of our Lord one thousand eight hundred and fifty-five.

[L. S.] JOHN CARNALL,
Clerk and ex-officio Recorder.

Upon the back of which is endorsed the following letters and figures, "to wit:"—

"Filed in office of the clerk of the D'r C't of the U. S. for the W. D'r of Ark's, on the 5th day of Nov., 1855."

"A. M'LEAN, Clerk."

November Term, A. D. 1855.

Tuesday morning 9 o'clock, 13th November, A. D. 1855, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

Among other the following proceedings were had, to wit:—

MILTON J. LUKINS and JOHN LINTON, citizens of the State of Pennsylvania, Complainants, vs. THOMAS A. AIRD and NICHOLAS SPRING, citizens of the State of Arkansas, Defendants.	In Chancery.

This day came the said defendants and filed their joint and several answers to the said complainants' bill.

United States, *sct.*

In the District Court for the Western District of Arkansas, having Circuit Court jurisdiction.

The joint and several answers of Nicholas Spring and Thomas A. Aird, defendants, to the bill of complaint of Milton J. Lukins and John Linton, exhibited against them the said defendants.

These defendants respectively now and at all times hereafter saving and reserving to themselves all and all manner of benefit as advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:—

That they fully admit that they entered into an agreement for the sale of lots Nos. 5 and 6 in block P, in the city of Fort Smith, and also lots Nos. 7, 8, and 9 in the same block, by this defendant Aird to this defendant Spring, and for the assignment to said Spring of the title bond in said bill named in that behalf, and that in pursuance of said agreement between them, the said assignment was

made and a deed of conveyance to said *said* lots Nos. 5 and 6 executed said deed and assignment bearing date the 23d day of November, 1853, and that said deed and assignment were duly acknowledged and recorded, and that the same are truly and correctly exhibited with the said bill, and they admit that said firm of Norton, Perry, and Aird were indebted to complainants and to some other persons at the time of the execution of said deed and assignment. They, however, positively deny that said agreement for the sale and purchase of said lots was on either of their parts respectively made and entered into with the design of screening the individual property of this defendant Aird from the payment of the said partnership debts, or to defraud his creditors, and they deny also that the agreement was to convey said lots Nos. 5 and 6 for the nominal sum of $2500, and to make the assignment of the said bond for the nominal consideration $350, although, as before admitted, such were the considerations mentioned in the deed and assignment. They allege that the consideration agreed to be paid and which they positively declare was actually paid, was the sum of one thousand dollars in cash down, one year's subsequent rent of said lots, and a medical bill due by this defendant Aird to this defendant Spring, the rent and medical bill being estimated at the sum of $200, making in all the sum of $1200, which was the amount paid to the said defendant Aird for the said lots, and for which said deed and assignment were executed, and they positively deny that said deed and assignment were made in order to prevent the first creditors of this defendant from subjecting the said lots to the payment of their debts, or, that this defendant Spring might hold the same in trust for this defendant Aird, or for the benefit of any part of his family, or for both these defendants, or for any other person or persons except this defendant Spring; they admit that *that* a dwelling-house and other improvements were standing on the lots Nos. 5 and 6 at the time of the execution of said deed, but they deny that the same were at that time in the possession and occupancy of this defendant Aird, nor has he occupied them ever since without paying rent to this defendant Spring; on the contrary, they allege that at the time of the execution of the said deed, Charles Perkins was in the possession of said lots, and that this defendant Aird was a single man and had no family; that some time subsequent to that time he married and then took possession of the said lots in pursuance of said agreement between these defendants, and *has occupied the same ever since; that the rent for the year* 1854 *was included in the* $1200 *paid for said lots as aforesaid.* That it was agreed by these parties in the contract of sale of said lots and which was inducement for this defendant Aird to dispose of the lots in the manner he did, *although no part of the consideration* therefor; that this *defendant should have the privilege of occupying the said lots at the yearly rent of* $100 *after the first year, so long as the said Spring did not desire to make use thereof himself, or to sell and dispose*

of them, and that pursuant to such understanding $100 rent will be due at the end of the year 1855, when this defendant Aird expects to pay, and this defendant Spring expects to receive that amount of rent actually and in good faith.

They further answering, admit that *that* at the time of the execution of said deed the said lots Nos. 5 and 6 were not worth the sum of $2,500, nor do they believe they were ever worth that amount. They admit that they are worth over $500 at the present time, and this defendant Spring says that it was his opinion at the time he made the purchase that he could make these lots avail him the sum of $1,200, the amount which he paid for all of *of* them at least, if not more. If such had not been his belief he should not have made the purchase, and he believes that at that time they would have been estimated at about that in cash, although he believes that Aird would have met with difficulty in selling them for that, as very few were paying money for such property, but had this defendant known at the time that property of the kind was destined to depreciate so suddenly in value he should not have made the purchase, and as things have turned, he believes the purchase was a bad one for him, and that he gave too much for the property, and says that he is willing to take just what he actually gave for the whole of said lots, to wit, the sum of $1,200, and now offers to take that amount; and these defendants, the said Aird, upon his information and belief, and the said Spring, of his own knowledge, deny that this defendant Spring, at the time of such purchase, was in embarrassed circumstances, or that he was paying a high rate of interest on borrowed money, and this defendant Spring alleges that in and instance since he has resided in Fort Smith, it being necessary for him to pay a debt of James H. Sparks, for whom he was security, he borrowed of the school fund of Sebastian County, the said Sparks being in California at the time, the sum $500, for which he paid and is paying interest at the rate of 8 per cent. This sum, however, he borrowed for the said Sparks, viewing himself in the matter as in fact only security, expecting that the said Sparks will return, pay off the debt, interest and principal, and give this defendant no more trouble with it; if such had not been his expectations, and he had been satisfied that should ultimately have the debt to pay himself, he should have paid off the debt with his own money, and not borrowed money to pay it, for he alleges he had at that time, and has at any time since, until quite lately, had abundant means of his own to have paid it, and for which he had no immediate use, and this he alleges is the only instance which he now recollects of in which he has paid interest on borrowed money at all. He admits that he has frequently borrowed money of Sutton, Griffith & Co., and perhaps, though seldom, of others, say from $50 to $500 in amount for a few hours or a few days, or even perhaps for three or four weeks at a time, as a mere matter of accommodation, and returned the same without interest, and says that he

has repeatedly in such manner borrowed money of Sutton, Griffith & Co. when he had a large amount of his own at his house, merely to save the trouble of going to and returning therefrom, and this defendant Spring, as to the allegation in the bill, that he was in embarrassed circumstances at the time of said sale, further answers that he once, it is true, failed in business and fell behind for a considerable amount, but he says through the agency of industry and perseverance, and the smiles of Divine Providence, has been enabled some time since to compromise and discharge those old debts honorably he believes, and satisfactory to all parties concerned, and he admits that he is still poor and not wealthy, but he alleges that he is not and has not been at any time for the last six or seven years so poor that he could not, upon a few hours' notice, raise the sum of $1000 or $1500, all his own money, and that too without embarrassing him so far as his debts were concerned, and without interfering in any manner with his immediate and ordinary wants and necessities.

These defendants further answering, admit that Richard P. Pulliam, as assignee of the complainants, Milton J. Lukins, obtained the judgment at the time and place in the manner and for the amount in the said bill in that behalf alleged, and also that he, as assignee of Wilmer, Brother & Co., obtained the judgment at the time in the manner and for the amount in that behalf alleged against the said Norton, Perry & Aird, and that the same are truly and correctly exhibited with the said bill marked Exhibit "C," and they further admit that *that* the said Pulliam sued out his writs of *fieri facias* on said judgments as alleged, that the same came to the hands of the sheriff of Sebastian County, and were by him levied on said lots Nos. 5, 6, 7, 8 and 9, and that said lots were by him advertised and sold at the court-house door of said county, and that the *the* complainants, at said sale, became the purchasers, for the sum of $422, all in the manner and with such attending circumstances as in said bill in that behalf alleged, and that said purchasers paid the amount of purchase money to said sheriff, and that said writs with the endorsements of return, &c., are truly exhibited with the bill marked Exhibit F, and they also admit that said sheriff executed the deed to said lots in pursuance of such purchase at the time and in the manner in that behalf alleged, and that the acknowledgment thereof was duly taken in open court and entered upon the minutes thereof, and that said deed was afterwards duly recorded in the recorder's office of said county, all as alleged in said bill, and that said deed, with the certificates of acknowledgment and of record are duly and truly exhibited with the said bill marked Exhibit H. And they further admit that at the August term, A. D. 1855, of Sebastian Circuit Court, and not at the February term, this defendant Aird then being in the possession of the said lots Nos. 5 and 6, the complainants, by their attorneys, made application by petition to said court for an order direct-

ing the sheriff to put the complainants into possession of said lots, and that such order was made accordingly as alleged, and that at the hearing of said application *this defendant Spring appeared by his attorney and opposed the same*, and set up title to said lots under said deed of conveyance, and claimed to be the owner of said lots, all as alleged in said bill in that behalf, as well he might, having, as he conceives, a good right in law and equity so to do. And they further admit that this defendant Spring threatens to institute suit at law for the recovery of the possession of said lots 5 and 6 as soon as the complainants or their agents or tenants shall take possession, as well he may do, so he having, as he is advised and believes, the paramount and indefeasable title thereto in law and equity. THESE DEFENDANTS further admit *that they have alleged, and they still contend, and will endeavor at the hearing to maintain by proof that the debts upon which said judgments were rendered, were contracted subsequent to the passage of the act of the General Assembly of Arkansas, commonly called the homestead law*, and they deny that they were contracted previously to that time, *and therefore maintain that said lots* 5 *and* 6 *were not subject to sale under said writs of fieri facias;* and these defendants further say, that at the time of the execution of said deed and assignment, the said Aird was indebted to Spring for a medical bill as aforesaid, the amount of which they do not exactly recollect, but was about $60 or $70, and they positively deny that the same was ever paid to this defendant Spring otherwise than as a part consideration for said lots as aforesaid, and they positively deny that *that* the consideration paid by this defendant Spring for said lots as aforesaid, or any part thereof, was ever returned to this defendant Spring, or to any other person or persons for him, by this defendant Aird, or any one else, or that he was ever in any manner whatever repaid the same, or that such consideration was merely colorable.

They admit that *Aird first proposed to Spring the sale of said lots to him*, but they deny that Spring at that time was security for said firm of Norton, Perry & Aird in a large sum, or in any sum whatever, and this defendant Spring denies positively that he accepted the deed and assignment with the view to the advantage of Aird or his family otherwise than as hereinafter stated. They positively deny that it was agreed or understood that said Spring was not to hold the said lots for his own sole benefit, or as his own sole property.

And as to the obligation in the bill, that on the day of the execution of the said deed and assignment, this defendant Spring borrowed of Sutton, Griffith & Co., or one of their clerks, a sum of money, stating at the time that he wanted it to pay this defendant Aird for said lots, and that he would return the same in a short time; and that on the same day and immediately thereafter, he returned the said money, and remarked at the time of doing so, in the presence of R. P. Pulliam and others, that he had managed to

do without it, this defendant Aird says that he has no knowledge or information whatever, except from such allegations in the bill, and *therefore says he has no belief whatever about it.* And this defendant Spring says that *he will not deny that such transactions took place as alleged, but says that he has not the remotest recollection of anything of the sort.* He says that at the time he contracted for the lots, and *and* at the time of the execution of the deed, he had at his residence nearly or quite the sum of $1000, and this was the money which he relied on to pay for the lots while he was negotiating for them. That he also at that time had money in the hands of Sutton, Griffith & Co. He knows that he paid to Aird the *money which he had at his residence*, and if the circumstances alleged did transpire, *it must have been* that he obtained a sum of money at Sutton, Griffiths & Co., not knowing the exact amount at his residence, to make up the deficit or what that fell short of the $1000, and afterwards returned the balance, or it must have been that he obtained the money of them to pay for the lots, thinking it more convenient at the time than to go to his residence for it, and afterwards, before it was necessary to pay it, had occasion to go to his house where he got the money and paid for the lots, and afterwards returned the money so obtained at Sutton, Griffith & Co., *or so much of it as was not necessary to make up the deficit aforesaid.* He alleges that *such transaction could never have taken place in any other manner*, AND AS HE HAS NO RECOLLECTION WHATEVER OF ANY SUCH TRANSACTION, he is inclined to think the allegations in the bill in that respect are not true, *although he admits that it is possible they may be true.*

And these defendants further answering as to the interrogatories appended to the said bill, or to such thereof as they have not hereinbefore fully answered, make answer thereto, and say:—

1st interrogatory. This defendant Aird was one of the partners of the firm of Norton, Perry and Aird.

2d interrogatory. The firm of Perry & Aird failed in business about the 13 day of May, A. D. 1854, and they believe that all the members of those firms are now insolvent and at present are unable to pay their debts.

4th interrogatory. The history of the negotiation, contract, and conveyance was about as follows: This defendant Aird proposed to Spring to sell him the said lots, representing as he did so to the effect that the value of the lots invested in the line of his business would be much more profitable to him than the lots themselves, and that he wanted the money very much to enable him to pay off his debts, to purchase goods to replenish their stock and continue their business, and further stated that on this account he would sell them cheap for cash. That this defendant Spring at that time thinking that he had no desire to purchase property of that kind, refused to purchase or to enter into any negotiation therefor; that afterwards happening in company with each other, and this defendant Spring having reflected more upon the subject, offered the sum of one

thousand dollars in cash down for the lots, which Aird refused to take, stating that the lots cost him about $1900. This defendant Spring then said to the effect that he did not consider real estate of the kind consisting of wood buildings and improvements in Fort Smith worth what they originally cost, or the first cost of the lots and the cost price of the improvements, and that he would not give that amount in cash for any such property, nor could it be sold for that amount. That after some conversation as to the value of the said lots, which these defendants do not now recollect, and which was of no importance to any one, it was finally agreed that this defendant Spring should give the said one thousand dollars in cash, and let this defendant Aird *have the use of the property for the year* 1854 *free of rent*, and receipt to him an account which he held against him for medical services rendered to him, his sister, and a minor brother, for which he, this defendant Aird, was responsible, of some $60 or $70, which said rent and medical bill was as aforesaid estimated at $200, amounting in all to the sum of $1200; and it was furthermore agreed, at the time, that said Aird should, if he should so desire, have the use and occupation of the said lots 5 & 6 after the year 1854, *so long as this defendant retained the same, and might not want them for his own use; and this defendant might wish to rent them, which at that time was looked upon as a cheap rent*, and this was the full consideration paid for said lots as aforesaid, and in pursuance of such agreement the full amount of such consideration was paid and the deed and assignment executed.

5th Interrogatory. Charles Perkins drew up the deed and assignment, and this defendant, Aird, says he knows of no instructions being given him whatever; and this defendant, Spring, says that *he instructed him to insert as the consideration in the deed the sum of* $2,500, *and that he did this with the view of enhancing the value of the lots so far as the recital of the consideration in the deed might have an influence upon the value; and he alleges that this is to keep up the standard of value of the lots was the sole motive that induced him to have inserted in the deed a larger consideration than he actually paid.* He does not recollect of giving any instructions as to the consideration to be inserted in the assignment.

6 Interrogatory. The firm of Norton, Perry & Aird, as the firm of Perry & Aird, were in embarrassed circumstances at the time of the execution of said deed and assignment; but these defendants, each for himself, alleges that he did not at that time anticipate or apprehend a failure on the part of said firm; on the contrary, they fully believed and had entire confidence that said firm of Perry & Aird, who had purchased out and became responsible for the debts of the firm of Norton, Perry & Aird, would be able to pay up said debts and continue their business; and they still believe that they would have been able to do so had it not been for the subsequent revolution in commercial matters, and that their creditors through

sudden alarm refused that degree of leniency usual in such cases, forcing them to make an assignment.

7 and 8 Interrogatories. This defendant, Spring, says that he did not know the extent of the liabilities of the firm of Perry & Aird, but he knew that they had purchased out the firm of Norton, Perry & Aird, and had assumed the debts of that firm; he therefore knew and had reason to believe that they were indebted to some extent, but he denies all knowledge or belief that they at that time apprehended becoming reduced to insolvency, or that the said Aird was actuated by a desire to put the property beyond the reach of his creditors or the creditors of Norton, Perry & Aird, in any event whatever, or by a desire to secure the property for the benefit of his family, nor does he now know or believe that the said Perry & Aird had any such apprehensions, or that the said Aird was actuated by any such motives or desires.

9 Interrogatory. See page 3d of this answer.

10th Interrogatory. See page 3d of this answer.

11th Interrogatory. These defendants believe that at the time of the execution of said deed and assignment the lots would have been estimated and were worth about $1,200, the amount paid for them, or perhaps a little more, say at most $1,400; and this defendant, Spring, as to the object for making the purchase on his part, says, in the first place, he had the amount of money which he paid for said lots lying by him unemployed and yielding him no profit; secondly, he believed that the lots at that price would be a safe investment; and, in the third place, he was friendly to the said Aird, and believing that he wanted the money as he said he did for the purpose of paying off his debts, replenishing his stock of goods, and continuing his business, and that the money would be of more advantage to him in his business than the lots; he was willing to do him a kindness when it would do no injury, but on the contrary would also be a benefit to himself. And he alleges that these and no others were the motives, and comprise the object which induced him to make the purchase.

12 Interrogatory. *See page 5 of this answer.*

13 Interrogatory. No.

14th Interrogatory. *See answer to 4th interrogatory above.*

15 Interrogatory. See 9th and 10th pages of this answer, and answer to 4th int. above.

16 Interrogatory. See 2d and 10th pages above.

17th Interrogatory. See pages 10, 11, and 12, above.

18th Interrogatory. This defendant Spring paid Aird one thousand dollars of the consideration for said lots in the *in the* office of the clerk of the Circuit Court of the county of Sebastian, on the day of the acknowledgment of said deed, and this defendant Spring says that *only a small part of the money paid was obtained of Sutton, Griffith & Co., if any*, and he has no recollection of any part of it

being obtained of them, and both these defendants say that *no part of the money paid was ever handed back to Spring, by Aird or any one else.*

19th Interrogatory. These defendants, the said Aird, of his own knowledge, and the said Spring, upon his information and belief, say that this defendant Aird, did not have any money belonging to himself or any other person on deposit at the house of Sutton, Griffith & Co., at the time of the acknowledgment of said deed, as aforesaid.

20 Interrogatory. This defendant Aird did not, nor did any other person for him, supply this defendant Spring, or any other person, with any part of the money paid by Spring for said lots.

21st Interrogatory. *See page* 10 *above*, and they further answer that it positively is not, and never has been the understanding that this defendant Spring holds, or should hold, the said lots or any of them in trust for the said Aird, or for any one of his family, or that he is to reconvey the said lots or any of them to said Aird, or to any one in trust for either of them, as for any other person, or to such person as the said Aird or his wife may direct, or to any person whomsoever; on the contrary, they again assert that this defendant Spring holds the said lots by virtue of the said conveyance in fee simple, solely for his own use, benefit, and behoof.

22 Interrogatory. Aird did not in any manner give said Spring to understand that he expected him to reconvey said lots, or any of them, to him or his wife, or any one else, at some future day, or at any other time.

23 and 24 Interrogatories. There is not in existence at this time, any paper writing, signed or not signed by any one, nor has there been at any time, or having reference to any time past, present, or future, which would in the slightest degree tend to show that said deed was intended to create a trust, or that it was a conditional conveyance or a mortgage, nor only in any manner touching or alluding to said lots or the said deed or the consideration for the same, nor did this defendant Spring ever give to this defendant Aird, or to any person for him, or any one else, anything in writing respecting the said lots, or the improvements thereon.

25th Interrogatory. This defendant Spring answers and says that Col. *James P. Spring on behalf of this defendant, applied to said John Gardner to bid in the said lots at said sheriff sale*, and directed him to bid only a small amount, in order that if the lots went very low, to buy them and save the expense of a law suit, and directed him not to purchase them unless they went for a less sum than it would take to conduct a suit to settle the title. That such application and instructions were given at the instance of said James P. Spring, *without any authority from this defendant to that effect*, and this defendant is informed and believes that said Gardner did appear at said sale, and did bid for said lots accordingly. And this defendand Aird says that said Gardner did not nor did any other person appear at said sale and bid for said lots in his behalf, or

with knowledge or consent, nor had he any information of the said Gardner's bidding therefor, until long afterwards.

26th Interrogatory. This defendant Spring was not and never was the security, or one of any number of securities of Perry & Aird, in an obligation executed by them to Norton, for the payment of the debts of Norton, Perry & Aird. They admit that he was one of the securities in an obligation executed by them to Norton to indemnify him against the payment of said debts, or against loss by being forced to pay them; but the said deed and assignment was not, nor was either of them executed or designed as an indemnity against this defendant Spring's liability upon said obligation, nor was such a thing ever thought of by these defendants. They allege that the said obligation has been cancelled.

27th Interrogatory. No improvements have been put upon the lots since they have belonged to Spring, and been in the possession of this defendant, *except the cultivation of the garden and walks, which was done by Aird, for his present use and profit.*

28th Interrogatory. The defendant, Spring, has paid the taxes ever since he purchased the lots. Aird has never paid the same to Spring and never will.

29 and 30 Interrogatories. This defendant, Aird, answers that he did not expect to get a reconveyance from Spring after settling the debts of Norton, Perry & Aird of said lots, or either of them, nor has he ever expected to get a reconveyance at any time, nor did he expect to leave Fort Smith at the time he sold the lots, nor did he provide any other residence for his family.

31 Interrogatory. See answers to 21 and 30 interrogatories above.

32 Interrogatory. See page 4 above.

33d Interrogatory. Perry & Aird made an assignment for the benefit of their creditors on the 13 day of May, A. D. 1854, such assignment was not in contemplation at the time of the execution of said deed, nor until long afterwards. This defendant, Aird, says that, according to his best recollection, only a small part of the identical money received for said lots if any was embraced in the assignment; the money or most of it had been used and appropriated in the course of his business transactions previous to the assignment.

34 Interrogatory. See answer to 6 interrogatory above.

35 Interrogatory. This defendant, Aird, answers and says that he proposed to sell said lots to William W. Fleming before he offered them to Spring, he does not recollect the exact time.

And these defendants further answering deny all and all manner of fraud whatever in the transaction of the sale and purchase of the said lots, either as to the creditors of the said Aird or of the firm of Norton, Perry & Aird, or otherwise; and this defendant, Aird, disclaims all right, title, or interest whatsoever in law or equity in or to the said lots or any of them; and this defendant, Spring,

alleges that the said deed and assignment were made in good faith for a valuable and adequate consideration, and he insists that the said deed ought not to be cancelled, but that the same ought to be declared to constitute a good and indefeasable title in fee simple to the said lots in this defendant; and these defendants deny all and all manners of combination and confederacy wherewith they are charged by said bill, without this that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for them to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and they pray to be hence discharged with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS A. AIRD,
NICHOLAS SPRING,
By CLARK & SPRING,
Solicitors for Defendants.

State of Arkansas, County of Sebastian.

I, Thomas A. Aird, being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer as from the information of others I believe to be true, and that all the several other matters therein contained are true in substance and in fact. THOS. A. AIRD.

Sworn to and subscribed before me this 18th day of November, A. D. 1855. FRANCIS McKIERNAN, J. P.

State of Arkansas, County of Sebastian.

I, Nicholas Spring, being duly sworn, depose and say, that all the several matters and things which are set forth in the foregoing answer, as from the information of others, I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact. NICHOLAS SPRING.

Sworn to and subscribed before me this 13th day of November, 1855. FRANCIS McKIERNAN, J. P.

Upon the back of said answer is endorsed the following words and figures, to wit:—

"Filed 13th November, A. D. 1855."

A. McLEAN, Clerk.

Monday morning, 9 o'clock, 3d December, A. D. 1855, court met pursuant to adjournment, present the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON, Complainants, vs. THOMAS A. AIRD and NICHOLAS P. SPRING, Defendants. } Bill in Chancery. No.

This day the complainants filed their amended bill of complaint, and entered then general replication in short upon the record to the defendants joint and several answer to their original bill.

State of Arkansas, *sec.*

In the District Court of the United States for the W. D't of Ark's.
In Chancery.

An amendment to the original bill of complaint exhibited by Milton J. Lukins and John Linton against Thomas A. Aird and Nicholas P. Spring.

To the Honorable the Judge of the District Court of the United States for the Western District of Arkansas, in Chancery sitting:—

Milton J. Lukins and John Linton, who exhibited their original bill of complaint on the chancery side of this honorable court against Thomas A. Aird and Nicholas P. Spring, bring this their amended bill of complaint against the said Aird and Spring; and thereupon your orators, by way of amendment to their said original bill, complain and say—

That in addition to lots numbered five and six in block P, in said original bill of complaint alleged to have been conveyed by the said Aird to the said Spring by deed bearing date the 23d day of November, A. D. 1853, which is therewith exhibited marked "Exhibit A," the said Aird in and by the same deed conveyed to the said Spring lots numbered one and two in the same block, as will appear by reference to said exhibit, which is prayed to be taken as part of this amendment.

And your orators further show by way of amendment to their said original bill, that at the time of the execution of the assignment of the title bond, in said original bill mentioned, by the said Aird to the said Spring, the entire amount of the purchase money for lots numbered 7, 8, and 9, in the condition thereof mentioned, had been fully paid and satisfied, and that since the execution of said assignment the said Spring has obtained from John Rogers, the obligor of said title bond, a deed to said last mentioned lots under and by virtue of the assignment.

And your orators further show, by way of amendment to their original bill, that the consideration of $1200, which the defendants in their joint and several answer to said original bill, state was the real consideration given for lots numbered 5 and 6 was not equal to the one-third of the value of lots numbered 1, 2, 5, 6, 7, 8, and 9; and was not in fact as much as lots numbered 5 and 6 with their

appurtenances were really worth at the time of the execution of said deed and assignment.

And your orators further show by way of amendment that the said Aird was not married at the time of the execution of the last mentioned deed, as is alleged in their original bill; but that he was at that time under an engagement to marry with the lady whom he subsequently married; and that the execution of said deed for lots numbered 1, 2, 5, and 6, and the assignment of the title bond for lots numbered 7, 8, and 9, by the said Aird to the said Spring was designed and intended solely for the purpose of creating a secret trust for the benefit of said Aird's intended wife.

And your orators, by way of further amendment pray, that the said defendants may be required upon their several corporal oaths, and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated by way of amendment, and especially to the several interrogatories hereinafter numbered and set forth; as by the note hereunder written he is required to do, that is to say—

1. Whether or not the said Aird in and by the deed of conveyance bearing date the 23d of November, 1855, conveyed lots numbered 1, 2, 5, and 6, to the said Spring?

2. Whether or not the entire amount of the purchase money expressed in the condition of the title bond for lots numbered 7, 8, and 9, or any part thereof, and what amount had been paid at the time of the assignment thereof to said Spring?

3. Whether or not said Spring has since the assignment of said bond to him, obtained a deed from the obligor for lots 7, 8, and 9? And if yea, state what amount, if any, he paid said Rogers in addition to what had been paid for said lots before the assignment.

4. Whether or not did said Spring make any inquiry of said Rogers before the assignment was executed, respecting the payment of the purchase money, or as to how much had been paid?

WALKER & GREEN,
Sol. for Comp.

5. Note. Both the defendants are required to answer each of the foregoing interrogatories.

Upon the back of which amended bill is endorsed the following letters and figures, to wit: Filed in open court on the first Monday of December, A. D. 1855. A. McLEAN, Cl'k.

United States, *ss.*

In the District Court of the United States for the Western District of Arkansas.

The answer of Thomas A. Aird and Nicholas Spring to the amendment to the bill of complaint of Milton J. Lukins and Linton.

These defendants, saving and reserving, &c., for answers to the said amendment as so much, &c., answering say:—

That they believe the *the* consideration of $1200 was about a fair price for all of said lots, at the time of the said purchase by this defendant Spring; they do not believe they could have been sold for more in cash at that time, although they allege that it is almost impossible for any one to say, with any degree of certainty, what real estate of the kind was worth in Fort Smith. They further answering, deny the said Aird upon his own knowledge, and the said Spring upon his information and belief, that said Aird was engaged to be married to his present wife or to any one else at the time of the said sale; and they both positively deny that the object of the sale was to create a trust for his present wife, or for any other person whatever, but they affirm that the sale was made in good faith and for the consideration aforesaid.

CLARK & SPRING,
Solicitors for Defendants.

State of Arkansas, County of Sebastian.

I, Nicholas Spring, do depose and say, that the matters and things set forth in the foregoing answer, so far as stated upon my own knowledge, are true in substance and in fact, and so far as stated upon the information of others I believe them to be true.

NICHOLAS SPRING.

Sworn to and subscribed before me this
SAMUEL EDMONDSON, J. P.

State of Arkansas, County of Sebastian.

I, Thomas A. Aird, do depose and say, that the matters and things contained in the foregoing answer, so far as stated, and on my own knowledge, are true, and so far as stated on the information of others I believe them to be true.

THOS. A. AIRD.

Sworn to and subscribed before me this
SAMUEL EDMONDSON, J. P.

Upon the back of which answer to amendment is endorsed the following letters and figures, to wit:—

Filed 5th January, A. D. 1856.

A. M'LEAN, Clerk.

In the District Court of the United States for the Western District of Arkansas. In Chancery.

The replication of Milton J. Lukins and John Linton, complainants, to the joint and several answer of Thomas A. Aird and Nicholas P. Spring, defendants, to the amendments to the bill of complaint of the above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say: That they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, traversed, or denied, is true, all which matters and things these repliants are, and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

WALKER & GREEN,
Sol. for Complainants.

Upon the back of which is endorsed the following letters and figures, to wit:—

Filed 1st Monday in January, 1856.

A. M'LEAN, Cl'k.

Thursday morning, 8 o'clock, 29th May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, Judge.

JOHN LINTON and MILTON J. LUKINS, Complainants,
vs.
THOMAS A. AIRD and NICHOLAS SPRING, Defendants.
} In Chancery. No.

And now on this day came the parties by their solicitors, and on motion of the complainants, and by consent of parties, it is ordered that the time for taking depositions in this cause be enlarged and extended for the term of three months, and that the parties have time until the end and expiration of three months from the date of this order to take depositions in this cause, and it is further on such motion and by consent of parties, ordered that John Carnall and Joseph W. Vandever, of the city of Fort Smith, in this State, be and they are hereby appointed commissioners to take depositions in this cause, and the said John Carnall and Joseph W. Vandever, both together, or either of them separately, are hereby fully authorized and empowered to take such depositions in the manner prescribed by law and the rules of this court in such cases.

And the parties are at liberty to have their commission or commissions directed to either or both of them at their election.

Thursday morning, 9 o'clock, 13th November, A. D. 1856, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

In the District Court of the United States for the W. Dist. of Arkansas, in chancery, Nov. term, 1856.

LINTON and LUKINS, Complainants,
vs.
AIRD and SPRING, Defendants.
} Bill in Equity.

The complainants moves the court here to enlarge the time allowed for taking the depositions in this case, because they say that John Gardner, or material witness for them, left the State on or about the 19th day of June last, and has been absent out of the State ever since until within the last eight or ten days, and has not yet returned home; that interrogatories were filed for his examination in the office of the clerk of this court, and notice thereof given to the defendants' solicitors in time to have taken his deposition before the expiration of the time allowed by the order made in this for the taking of depositions; that said Gardner's absence has not been occasioned by complainants, and the taking of his deposition has been prevented solely by his absence from the State; that complainants' solicitors expect to prove by said Gardner that he bid for the property in the pleadings mentioned, at the sale under execution therein mentioned, at the instance of defendant, who is alleged in and by said bill to be the fraudulent vender of said property, which is a material allegation, or a fact tending to prove one of the material allegations in said bill. That this application is not made for delay, but that justice may be done.

W. WALKER,
One of the solicitors for complainant.

Sworn to and subscribed in open court this 13th November, 1856. A. McLEAN, Clerk.

Upon the back of which is endorsed the following letters and figures, to wit: Filed in open court 13th November, A. D. 1856.
A. McLEAN, Clerk.

MILTON J. LUKINS and JOHN LINTON,
Complainants.
vs.
THOMAS AIRD and NICHOLAS SPRING,
Defendants.
} In Chancery. No.

On motion of complainants' solicitors, it is ordered by the court here that the time for the taking of depositions in this case be enlarged and extended for fifteen days from this day, and that a commission issue for the examination of John Gardner, of Fort Smith, with the interrogatories on file for his examination thereto annexed. And on motion of the said complainants' solicitor, it is ordered that the depositions heretofore taken in this case be published, which is accordingly done.

Wednesday morning, 9 o'clock, 26th November, A. D. 1856, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON, Complainants, vs. THOMAS AIRD and NICHOLAS SPRING, Defendants. } In Chancery. No.

This day came the complainants by their solicitors on their motion, ordered by the court that the depositions taken in this case on the part of said complainants, be published, which is done accordingly.

Thursday morning, 8 o'clock, 28th May, A. D. 1857, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON, Complainants, vs. THOMAS A. AIRD and NICHOLAS SPRING, Defendants. } In Chancery. No.

And now at this day came the said complainants by Walker & Green, Esqrs., their solicitors, and the said defendants by Solomon F. Clark, Esq., their solicitor, and this cause coming on to be heard, was argued by counsel as on the part of said complainants as of the said defendants, and submitted to the court, and the court not being now well and sufficiently advised of and concerning the premises, takes time to consider thereof.

United States of America, Western District of Arkansas, *sct.*

The President of the United States to William W. Perry, John Gardner, Henry Bechle, and John Rogers, Greeting:—

You are hereby commanded that, laying aside all business and excuses, you and each of you be and appear in your proper persons before Joseph W. Vandever, commissioner duly appointed and authorized in virtue of a commission from the District Court of the United States for the Western District of Arkansas, to examine you as witnesses in a cause depending in the said District Court, wherein Milton J. Lukins and John Linton are complainants, and Thomas A. Aird and Nicholas Spring are defendants, on the part of the complainants upon interrogatoies annexed to the said commission at the law office of Duval & King, in the city of Fort Smith, at ten o'clock in the forenoon of Monday, 24th day of November, A. D. 1856, to answer truly all such questions as shall then and there be asked you upon such interrogatories, and this you or any of you shall by no means omit under the penalty upon each of you of four hundred dollars.

Witness my hand as such commissioner, this 24th day of November, A. D. 1856. J. W. VANDEVER, Commissioner.

I do hereby certify "That I executed the within writ of subpœna on the 24th day of November, A. D. 1856, at Upper Township in

the county of Sebastian, on William W. Perry, John Gardner, Henry Beckle, and John Rogers, by then and there reading to each of them, in each of their presence and hearing, the contents of the same.

JNO. R. A. HENDRY,
Constable of Upper Township in Sebastian County.

United States of America, Western District of Arkansas.

The President of the United States, to Joseph W. Vandever, greeting:—

Know ye that in confidence of your prudence and fidelity you have been appointed and by these presents you are invested with full power and authority to examine Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk, John Carnall, William W. Perry, Henry Beckle, John Rogers, and Mitchel Sparks, of Sebastian County, in the State of Arkansas, on their corporal oaths as witnesses in a cause depending in the District Court of the United States, in and for the Western District of Arkansas, wherein Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, who are citizens of the State of Arkansas, are defendants, on the part and behalf of the complainants upon the interrogatories annexed to his commission, and therefore you are hereby commanded that you, at certain days and places, to be appointed by you for that purpose, do cause the said Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk, John Carnall, William W. Perry, Henry Beckle, John Rogers, and Mitchell Sparks, to come before you, and then and there examine them on oath upon the said interrogatories, and that you take such examination and reduce the same into writing, and return the same annexed to this writ closed up under your seal unto the said District Court before the judge thereof with all convenient speed.

In testimony whereof, Daniel Ringo, Judge of the District Court of the United States for the Western District of Arkansas, hath caused the seal of said court to be hereunto affixed this day A. D. 1856, and in the 81st year of our Independence.

[L. S.] A. McLEAN, Clerk.

Interrogatories to be administered to Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk, John Carnall, William W. Perry, Henry Beckle, John Rogers, and Mitchell Sparks, of Sebastian County, in the State of Arkansas; witnesses to be produced, sworn, and examined, in a certain cause depending in the District Court of the United States for the Western District of Arkansas, wherein Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, who are

citizens of the State of Arkansas, are defendants, on the part and behalf of the complainants, that is to say,

1 Interrogatory. Do you know the parties, complainants and defendants, in the title of these interrogatories, or either, and which of them, and how long have you known them respectively, or such of them as you do know; declare the truth and your knowledge herein.

2 Interrogatory. Whether or not do you know, and have you or not at any and *how long* time known or been acquainted with the town lots or tenements situate in the city of Fort Smith, in Sebastian County, in the State of Arkansas, in the pleadings in this cause, mentioned, to be lots numbered one, two, five, six, seven, eight, and nine, in block P? If yea, state whether or no any and what improvements were erected on any and which of said lots on the 23d of November, A. D. 1853, and the value of such improvements, if any there were, at that time; declare the truth and your knowledge herein.

3 Interrogatory. What was the value of lots numbered one and two inquired after by the last preceding interrogatory, and the appurtenances, if any, thereunto belonging or appertaining, on the 23d day of November, A. D. 1853? What was the value of the lots numbered 5 and 6, inquired after by the same interrogatory, and the tenements and appurtenances thereunto belonging and appertaining at that time? What was the value of lots numbered seven, eight, and nine, inquired after by that interrogatory, and the appurtenances and improvements thereunto belonging, if any, at that time? Declare the truth and your knowledge herein.

4 Interrogatory. Whether or no the defendant, Thomas A. Aird, at any time since the 23d day of November, A. D. 1853, and when in possession or in receipt of the rents and profits of the said lots, or either and which of them. Declare the truth and your knowledge herein.

5 Interrogatory. Whether or no did the defendant, Nicholas Spring, borrow of Messrs. Sutton, Griffith & Co., of the city of Fort Smith, any sum or sums of money on or about the 23d day of November, A. D. 1853? if yea, what sum or sums of money, and to what amount in the whole did the said Nicholas P. Spring borrow of them, and when, or at, or about what time or times was, or were, the same so borrowed, and whether or no the same or any part thereof was borrowed for the purpose or with the intention of paying the said defendant, Thos. A. Aird, for the town lots inquired after by the 2d and 3d interrogatories? Declare the truth your knowledge herein.

6 Interrogatory. Whether or no were you at any time or times, and when, present at any conversation or conversations between the defendant, Nicholas Spring, and one of the members of the firm of Sutton, Griffith & Co., hereinbefore inquired after, or either of their clerks, as to money the said Nicholas Spring had borrowed

from said Sutton, Griffith & Co., wherewith to pay said defendant, Aird, for the lots hereinbefore inquired after? if yea, set forth all and every the particulars of such conversation or conversations, and what was said therein both by the said Nicholas Spring and the person or persons with whom he had such conversation respectively, and when, and where, and in whose presence and hearing, and upon what occasion or occasions, all and every such conversations took place, and *and* whether or no you were present at any and what time when said Nicholas Spring returned or paid to said Sutton, Griffith & Co., a sum of money he had borrowed of them to pay to said Aird for said lots; and if yea, state whether or no the said Nicholas Spring, on that occasion, remarked that he had managed to do without the money, or made any other and what remark of the like or similar import. Declare the truth and your knowledge herein.

7. Whether or no the late mercantile firm of Perry & Aird in the pleadings in this cause mentioned are insolvent; if yea, state when or about what time they became insolvent, and whether or no they were embarrassed in their circumstances at or before the sale of the lots hereinbefore inquired after by defendant Aird to defendant Spring on the 23d day of November, A. D. 1853. Declare your

8. Whether or no did John Gardner, mentioned in the title of these interrogatories, attend the sale of the lots hereinbefore inquired after by the sheriff of Sebastian County, on the 19th day of February, A. D. 1855, at the court-house door in the city of Fort Smith, under the several executions in the pleadings in said cause mentioned, and bid for the said lots or either and which of them; if yea, state whether or no he did so at the instance of said defendant Spring, and whether or no he bid for any and which of said lots for said defendant Spring. Declare the truth and your knowledge herein.

9. Whether or no the said defendant Spring has, at any time since the 23d day of November, A. D. 1853, made a showing of his pecuniary condition or an estimate of the value of his property, or given a schedule thereof with its value with a view of showing the ability of the firm of Sutton, Griffith & Spring, to pay its debts and liabilities, or with any other or different view, or for any other or different purpose; if yea, state whether or no the lots and premises hereinbefore inquired after, or either and which of them, in such schedule or estimate; and if yea, what was the value at which they were estimated or set down in the schedule. Declare the truth and your knowledge herein.

10th. Whether or no defendant Spring was ever insolvent, and when he was reputed so to be. Declare the truth and your knowledge herein.

11th. Whether or no defendant Spring was pressed for means at or about the 23d of November, A. D. 1853, to meet his engagements

with mechanics, workmen, laborers, and materials, men for work and labor, and materials performed, bestowed, and furnished in and about the erection of a costly and extensive brick building in the city of Fort Smith. Declare the truth and your knowledge herein.

12th. Whether or no said Spring obtained the major part of the means expended and advanced in erecting the building inquired after by the last interrogatory from the firm of Sutton, Griffith & Co., or a considerable portion of the amount. Declare the truth and your knowledge herein.

13th. Whether or no said Spring was largely involved in debt for borrowed money, at or about the 23d day of November, A. D. 1853. Declare the truth and your knowledge herein.

14th Interrogatory. Whether or no did James P. Spring, one of the witnesses named in the title of these interrogatories, is a brother of defendant Nicholas P. Spring, and an attorney at law. If yea, state whether or no he, the said James P. Spring, spoke to John Gardner, hereinbefore inquired after, to bid for said lots, or any of them, at the sheriff's sale, under the executions hereinbefore inquired after, for or on account of the defendant Nicholas Spring. Declare the truth and your knowledge herein.

Lastly. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in the cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Signed) WALKER & GREEN,
Solicitors for Complainants.

Duval & King's Law Office, Fort Smith, Ark's.

The execution of this commission appears in a certain schedule hereunto annexed, November 24th, 1856.

J. W. VANDEVER, Commissioner.

Depositions of John Gardner,

of the witnesses named in the title of the interrogatories hereto annexed, produced, sworn on the 21 day of November, A. D. 1856, at the Law Office of Benjamin T. Duval, Esquire, in the city of Fort Smith, in Sebastian County, in the State of Arkansas, by virtue of a commission issuing from the District Court of the United States for the Western District of Arkansas, to Joseph W. Vandever directed, for the examination of certain witnesses in a certain cause depending on the chancery side of said court, wherein Milton J. Lukens and John Linton, citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, are citizens of the State of Arkansas, are defendants

of the city of Fort Smith, and county and State aforesaid, aged years, or thereabouts, being produced, sworn, and examined on

behalf of the complainants upon said interrogatories, deposeth as follows:—

1. To the first interrogatory on the part of the

Depositions of John Gardner, William W. Perry, John Rogers, and Henry Beckle, four of of the witnesses named in the title of the interrogatories hereto annexed, produced, and sworn, on the 24th day of November, A. D. 1856, at the law office of Duval & King, in the city of Fort Smith, in Sebastian County, in the State of Arkansas, by virtue of a commission issuing from the District Court of the United States for the Western District of Arkansas, to Joseph W. Vandever directed, for the examination of certain witnesses in a certain cause depending on the chancery side of said court, Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, who are citizens of the State of Arkansas, are defendants.

John Gardner, of the city of Fort Smith, and county and State aforesaid, aged thirty-six years or thereabouts, being produced, sworn, and examined on behalf of the complainants upon said interrogatories, deposeth as follows:—

1. To the first interrogatory on the part of the complainant, he answers as follows:—

I am not acquainted with the complainants; I have been acquainted with the defendant ten years, or more.

2. To the second interrogatory, he answers as follows:—

I know the lots upon which is erected the house in which the defendant Thomas A. Aird, formerly lived, but cannot say definitely as to the number and designation of them, or the block. Don't remember positively as to what improvements were on them; on the 23d of November, 1853. Thomas A. Aird, the defendant, resided in the house upon the lots, or a portion of them, during the years 1854, 1855, and part of 1856, how much longer cannot state; nor don't remember when he first went there to live.

J. W. VANDEVER, Commissioner.

I cannot state what improvements were on said lots, or any of them, on or before 23d November, 1853, and cannot say, therefore, what was the value of the improvements.

3. To the third interrogatory of the complainant, he answers as follows —

I cannot state anything definitely in regard to the several matters inquired of in said interrogatory, because I do not recollect what improvements were on said lots at that time.

4. To the fourth interrogatory of the complainant, he answers as follows:—

In my answer to the second interrogatory above, I stated that he had resided in the house upon said lots, or a portion of them, during the years 1854, 1855, and part of 1856. I have no know-

ledge of his paying or receiving any rents at any time for said house.

5. To the fifth interrogatory of the complainant he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

6. To the sixth interrogatory of the complainant, he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

7. To the seventh interrogatory of the complainant he answers as follows:—

The late firm of Perry & Aird are now insolvent. When they first became embarrassed I do not recollect. They failed about two years ago. I cannot say whether they were embarrassed about or before the 23d of November, 1853, because I do not recollect the precise date that I became acquainted with their being in failing circumstances. J. W. VANDEVER,
Commissioner.

8. To the eighth interrogatory of the complainant he answers as follows:—

I bid for some of the lots referred to in the interrogatory at the sale at the time and place therein mentioned, but do not now remember the numbers of them. I had intended before the sale commenced to bid for the whole of them together, but the sheriff sold them in different lots. I did not bid for them at the instance of the said defendant, Nicholas Spring.

9. To the ninth interrogatory of the complainants he answers as follows:—

I am entirely ignorant of the matters and things inquired of in this interrogatory.

10. To the tenth interrogatory of the complainants he answers as follows:—

I know nothing of the insolvency of the said defendant, Nicholas Spring, of my own knowledge, but I heard some years ago, before he moved to this place, that he was insolvent.

11. To the eleventh interrogatory of the complainants he answers as follows:—

I have no knowledge of the matters inquired of in this interrogatory, but should not wonder if he were so pressed, because I cannot see how a person could build such a house without being pressed.

12. To the twelfth interrogatory of the complainants he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

13. To the thirteenth interrogatory he answers as follows:—

I am ignorant of the subjects inquired about in this interrogatory. J. W. VANDEVER, Commissioner.

14th. To the fourteenth interrogatory of the complainant he answers as follows:—

James P. Spring inquired after is an attorney at law, and is a brother of the defendant, Nicholas Spring, and he requested me to bid off the lots before referred to at the sale above mentioned. It was my impression at the time, that he wished me to bid them in for himself—am certain he did not mention his brother's name; do not remember whether he said he wished me to bid them off for himself, or only to bid them off.

15. To the last interrogatory of the complainant he answers as follows:—

I know of nothing unless it be that at the sale referred to, I bid for said lots only by the request of the said James P. Spring, and expected if they were struck off to me, he would take them off of my hands. He did not expect any one would bid much for them, and told me not to exceed two hundred and fifty dollars for the whole of them.

And further this deponent saith not.

Attest, JOHN GARDNER.

J. W. VANDEVER, Commissioner.

William W. Perry, of the city of Fort Smith, aged thirty-two years, or thereabouts, being produced, sworn, and examined on behalf of the complainant, deposeth as follows:—

1. To the first interrogatory on the part of the complainant he answers as follows:—

I am not personally acquainted with the complainants. Know the defendants, and have known them for six or seven years.

J. W. VANDEVER, Commissioner.

2. To the second interrogatory of the complainant he answers as follows:—

I know the town lots mentioned in this interrogatory, and have known them for three or four years. There was a frame dwelling-house on lots No. five and six prior to the 23d day of November, 1853, and the lots were enclosed with a paling fence; the improvements on said lots, I think, were worth at that time from six to eight hundred dollars. There is now a log house on lot No. seven, the body of which and the roof was erected and put on at the time referred to; do not remember that the lot on those adjoining were enclosed—the improvements on lot seven were worth something like fifty dollars. Lots one and two were not enclosed, and had no improvements on them.

3. To the third interrogatory of the complainant he answers as follows:—

Lots one and two had no improvements on them at that time; cannot say positively what they were worth; they were not worth one hundred dollars a piece. Lots five and six were worth at the

time referred to, with the improvements, about eight or nine hundred dollars. Lots Nos. seven, eight, and nine, with such improvements as I can remember, were worth at the time referred to from two hundred and fifty to three hundred dollars.

4. To the fourth interrogatory of the complainant he answers as follows:—

The defendant, Thomas A. Aird, lived in the house on lots Nos. five and six before and at the time referred to, and continued to occupy said house until the spring of 1856. Know nothing of his being in the

J. W. VANDEVER,
Commissioner.

receipt of the rents and profits of that house since he left it, or of the house on lot seven at any time, either before or since.

5. To the fifth interrogatory of the complainant he answers:—

I heard one of the defendants say that the defendant Spring had borrowed of Sutton, Griffith & Co., somewhere between one thousand and twelve hundred dollars, the precise sum I do not remember, for the purpose of paying defendant Aird for the property referred to; do not remember which of them it was who told me of this. I heard this about the time of the sale or soon after.

6. To the sixth interrogatory of the complainant he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

7. To the seventh interrogatory of the complainant he answers as follows:—

The late mercantile firm of Perry & Aird, mentioned in this interrogatory, are now insolvent; they became insolvent and made an assignment in May, 1854. They became embarrassed before the 23d day of November, 1853. I was the senior partner of the firm; there were no suits commenced that I remember of, but one or two of our notes were in the hands of Jesse Turner, at Van Buren, for collection at that time.

8. To the eight interrogatory of the complainants he answers as follows:—

I remember that John Gardner bid for some of the lots at the sale referred to, but do not know at whose instance he bid for them; I think he bid for the house and lots five and six.

9. To the ninth interrogatory of the complainant

J. W. VANDEVER, Commissioner.

he answers as follows:—

I am entirely of the matter inquired of in this interrogatory.

10. To the tenth interrogatory of the complainant he answers as follows:—

I have heard the defendant Spring say he had been insolvent at one time in his life, but when I do not know.

11. To the eleventh interrogatory of the complainant he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

12. To the twelfth interrogatory of the complainant he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

13. To the thirteenth interrogatory of the complainant he answers as follows:—

I am ignorant of the matters inquired of in this interrogatory.

14. To the fourteenth interrogatory of the complainant he answers as follows:—

The James P. Spring referred to is the brother of the defendant Nicholas Spring, and is an attorney at law. I know nothing of his speaking to said John Gardner to bid for the lots referred to at the sale above mentioned for Nicholas Spring or any one else.

15. To the last interrogatory of the complainant he answers as follows:—

I can remember nothing at present.

And further this deponent saith not.

W. W. PERRY.

Attest, J. W. VANDEVER, Commissioner.

John Rogers, of the city of Fort Smith, aged sixty years, or thereabouts, being produced, sworn, and examined, on behalf of the complainants, deposeth as follows:—

To the first interrogatory of the compl't he answers as follows:—

I am not acquainted with the complainants; know the defendants, and have known them a good many years.

2. To the second interrogatory of the complainant he answers as follows:—

I have known the lots ever since the town was laid off. I am the proprietor of the city of Fort Smith, and had it laid off as a town. I sold to one William H. Ailes, and conveyed them by a deed dated in January, 1852, lots Nos. one, two, three, four, five, and six, in block P, for four hundred and fifty dollars. Ailes built on some of those lots a frame dwelling-house, afterwards occupied by Thomas A. Aird as a residence, he also enclosed all, or a portion of them, with a paling fence. The improvements made by Ailes were worth about seven or eight hundred dollars. I never examined the house, and from my opinion only from seeing it from the outside in passing by it; these improvements were made prior to November, 23d 1853. There was a log building on lot seven or eight at the time referred to, worth about fifty dollars or upwards.

3. To the third interrogatory of the complainant he answers as follows:—

Lots one and two, to sell them separately were worth one hundred dollars, a price. I sold them with the other lots, 3, 4, 5, and 6, at a less price by selling all together. Lots Nos. five or six, with the improvements, were worth eight or nine hundred dollars at the

time referred to in the interrogatory. Lots Nos. seven, eight and nine

J. W. VANDEVER,
Commissioner.

with the improvements, were worth three hundred dollars.

4. To the fourth interrogatory of the complainants he answers as follow:—

I know that the defendant Thomas A. Aird resided in said dwelling upon lots Nos. five and six, until the spring of 1856. Know nothing of his having received any rents or profits from said lots, or any of them.

5 & 6. Interrogatories fifth and sixth were severally propounded to said witness, to all and each of which he severally answers that he is ignorant of the matters and things therein inquired of. His general response to these interrogatories was thus taken by consent of James P. Spring, Esq., one of the defendants' solicitors, who was present during the taking of these depositions.

7. To the seventh interrogatory of the complainants he answers as follows:—

I know the late mercantile firm of Perry & Aird is now insolvent; do not remember when they became so, or when they first became embarrassed.

8th, 9th, 10th, 11th, 12th, and 13th. The eighth, ninth, tenth, eleventh, twelfth, and thirteenth interrogatories were severally propounded to this witness, and to each one he answers that he is ignorant of the matters and things therein inquired after.

14th. To the fourteenth interrogatory of the complainants he answers as follows:—

The James P. Spring referred to is an attorney at law, and is the brother of the defendant Nicholas Spring. I know nothing about his making any arrangement with John Gardner to bid for the lots referred, for said Nicholas Spring, or any one else.

15. To the last interrogatory of the complainants he answers as follows:—

J. W. VANDEVER, Commissioner.

The seven lots referred to were worth *in cash*, at the time referred to in the interrogatories, at least thirteen or fourteen hundred dollars. I know nothing further that I can now call to my mind.

And further this deponent saith not.

JOHN ROGERS.

Attest, J. W. VANDEVER, Commissioner.

Henry Beckle, of the city of Fort Smith, aged forty years or thereabouts, being produced, sworn, and examined, on the part of the complainants upon said interrogatories, deposeth as follows:—

1. To the first interrogatory of the complainants he answers as follows:—

I am not acquainted with the complainants. I have known the defendants some ten or twelve years.

2. To the second interrogatory of the complainants he answers as follows:—

I know the lots referred, but do not know them by number and designation. I know them from the fact of being familiar with their locality. There was a house upon some of the lots in which defendant Thomas A. Aird lived until last spring. The house had been built by Sergeant Ailes. There was a fence around the lots upon which the house is situate. I never was inside of the *of the* house, but from the general appearance from the outside, I would say the improvements were worth about eight hundred dollars at the time referred to. I know nothing of the other improvements upon said lots, or any of them.

3. To the third interrogatory of the complainants he answers as follows:—

Not knowing the numbers of the lots, I cannot say as to the value of them and improvements.

J. W. VANDEVER, Commissioner.

4. To the fourth interrogatory of the complainants he answers as follows:—

The defendant Thomas A. Aird resided in the house upon said lots above referred to, something like two years; do not remember the precise time. Know nothing of his receiving any rents from the premises at any time.

5th & 6th. To the fifth and sixth interrogatories of the complainant he answers that he is ignorant of the matters therein severally inquired after.

7. To the seventh interrogatory of the complainants he answers as follows:—

The firm of Perry and Aird are insolvent; they became so about or upwards of two years ago; don't know when they became first embarrassed; don't think they were embarrassed three years ago.

8, 9, 10, 11, 12, & 13. The eighth, ninth, tenth, eleventh, twelfth, and thirteenth interrogatories were severally propounded to this witness, and he answers that he is ignorant of the several matters therein inquired after.

14. To the fourteenth interrogatory of the complainants he answers as follows:—

The James P. Spring referred, is an attorney at law, and is a brother of the defendant Nicholas Spring. I know nothing of any arrangement between him and John Gardner to bid for the lots referred to, for defendant Spring, or any one else.

15. To the last interrogatory of the complainants he answers as follows:—

I know nothing.

And further deponent saith not.

H. BECKLE.

Attest, J. W. VANDEVER,
Commissioner.

The taking of the answers of John Rogers to 5th, 6, 8, 10, 11, 12, & 13 interrogatories, and of Henry Beckle to the same interrogatories was done by the concurrence and consent of the undersigned, and for the purpose of facilitating the examination, Nov. 24, 1856.

JAMES P. SPRING,
Sol. for Defendants.

Attest, J. W. VANDEVFR,
Commissioner.

Upon the back of which was endorsed the following letters and figures, to wit:—

Filed 26th Nov., A. D. 1856. A. McLEAN, Clerk.

United States of America, Western District of Arkansas,

The President of the United States to John Carnall, greeting:—

Know ye, that in confidence of your prudence and fidelity you have been appointed and by these presents you are invested with full power and authority to examine Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk, John Carnall, William W. Perry, Henry Beckle, John Rogers, and Mitchell Sparks, of Sebastian County, in the State of Arkansas, on the corporal oath as witnesses in a cause depending in the District Court of the United States in and for the Western District of Arkansas, wherein Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, who are citizens of the State of Arkansas, are defendants, on the part and behalf of the complainants upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you at certain days and places to be appointed by you for that purpose, do cause the said Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk, John Carnall, William W. Perry, Henry Beckle, John Rogers, and Mitchell Sparks, to come before you, and then and there examine them on oath upon the said interrogatories, and that you take such examination and reduce the same into writing and return the same annexed to this writ closed up under your seal into the said District Court before the judge thereof with all convenient speed.

In testimony whereof, Daniel Ringo, Judge of the District Court of the United States for the Western District of Arkansas, hath caused the seal of said court to be hereunto affixed this 26th day of August, A. D. 1856, and in the 81st year of our independence.

[L. S.] Attest, A. McLEAN, Clerk.

The execution of this commission appears in a certain schedule hereunto annexed. JOHN CARNALL, Commissioner.

Interrogatories to be administered to Richard P. Pulliam, John Gardner, James P. Spring, Samuel L. Griffith, William L. Polk,

John Carnall, William W. Perry, Henry Beckel, John Rogers, and Mitchell Sparks, of Sebastian County, in the State of Arkansas, witnesses to be produced, sworn, and examined in a certain cause depending in the District Court of the United States for the Western District of Arkansas, wherein Milton J. Lukins and John Linton, who are citizens of the State of Pennsylvania, are complainants, and Thomas A. Aird and Nicholas Spring, who are citizens of the State of Arkansas, are defendants, on the part and behalf of the complainants, that is to say—

1 Interrogatory. Do you know the parties, complainants and defendants, in the title of these interrogatories, or either and which of them, and how long have you known them, respectively, or such of them as you do know? Declare the truth and your knowledge herein.

2 Interrogatory. Whether or no do you know and have you or not at any, and *how long*, time known or been acquainted with the town lots or tenements situate in the city of Fort Smith, in Sebastian County, in the State of Arkansas, in the pleadings in this cause mentioned to be lots numbered one, two, five, six, seven, eight, and nine, in block P; if yea, state whether or no any and what improvements were erected on any and which of said lots on the 23d of November, A. D. 1853, and the value of such improvements, if any there were, at that time. Declare the truth and your knowledge herein.

3 Interrogatory. What was the value of lots numbered one and two inquired after by the last preceding interrogatory, and the appurtenances, if any thereunto belonging or appertaining, on the 23d day of November, A. D. 1853? What was the value of the lots numbered 5 and 6 inquired after by the same interrogatory, and the tenements and appurtenances thereunto belonging and appertaining at that time? What was the value of lots numbered seven, eight, and nine, inquired after by that interrogatory, and the appurtenances and improvements thereunto belonging, if any, at that time? Declare the truth and your knowledge herein.

4 Interrogatory. Whether or no was the defendant, Thomas A. Aird, at any time since the 23d day of November, A. D. 1853, *and when*, *in* possession or in receipt of the rents and profits of the said lots, or either and which of them. Declare the truth and your knowledge herein.

5 Interrogatory. Whether or no did the defendant, Nicholas Spring, borrow of Messrs. Sutton, Griffith & Co., of the city of Fort Smith, any sum or sums of money on or about the 23d day of November, A. D. 1853; if yea, what sum or sums of money, and to what amount in the whole did the said Nicholas P. Spring borrow of them, and when, or at, or about what time or times was or were the same so borrowed, and whether or no the same or any part thereof was borrowed for the purpose or with the intention of paying the said defendant, Thos. A. Aird, for the town lots inquired

after by the 2d and 3d interrogatories. Declare the truth and your knowledge herein.

6th Interrogatory. Whether or no were you at any time or times and *when* present at any conversation or conversations between the defendants, Nicholas Spring and one of the members of the firm of Sutton, Griffith & Co., hereinbefore inquired after, or either of their clerks, as to money the said Nicholas Spring had borrowed from said "Sutton, Griffith & Co., wherewith to pay said defendant Aird for the lots hereinbefore inquired after; if yea, set forth all and every the particulars of such conversation or conversations, and what was said therein both by the said Nicholas Spring and the person or persons with whom he had such conversation respectively, and when and where and in whose presence and hearing and upon what occasion or occasions all and every such conversations took place, and whether or no you were present at any and what time when said Nicholas Spring returned or paid to said Sutton & Griffith a sum of money he had borrowed of them to pay to said Aird for said lots; and if yea, state whether or no the said Nicholas Spring, on that occasion, remarked that he had managed to do without the money, or made any other and what remark of the like or similar import. Declare the truth and your knowledge herein.

7th. Whether or no the late mercantile firm of Perry & Aird in the pleadings in this cause mentioned are insolvent; if yea, state when or about what time they became insolvent, and whether or no they were embarrassed in their circumstances at or before the sale of the lots hereinbefore inquired after by defendant Aird to defendant Spring on the 23d day of November, A. D. 1853. Declare

8th. Whether or no did John Gardner, mentioned in the title of these interrogatories, attend the sale of the lots hereinbefore inquired after, by the sheriff of Sebastian County, on the 19th day of February, A. D. 1855, at the court-house door, in the city of Fort Smith, under the several executions in the pleadings in said cause mentioned, and bid for the said lots or either and which of them; if yea, state whether or no he did so at the instance of said defendant Spring, and whether or no he bid for any and which of said lots for said defendant Spring. Declare the truth and your knowledge herein.

9th. Whether or no the said defendant Spring has at any time since the 23d day of November, A. D. 1853, made a showing of his pecuniary condition, or an estimate of the value of his property, or given a schedule thereof with its value, with a view of showing the ability of the firm of Sutton, Griffith & Spring to pay its debts and liabilities, or with any other or different view, or for any other or different purpose; if yea, state whether or no the lots and premises hereinbefore inquired after, or either and which of them in such schedule or estimate; and if yea, what was the value at

which they were estimated or set down in the schedule. Declare the truth and your knowledge herein.

10th. Whether or no defendant Spring was ever insolvent, and when he was reputed so to be. Declare the truth and your knowledge herein.

11th. Whether or no defendant Spring was pressed for means at or about the 23d of November, A. D. 1853, to meet his engagements with mechanics, workmen, laborers, and material, men for work, and labor, and materials, performed, bestowed, and furnished in and about the erection of a costly and extensive brick building in the *the* city of Fort Smith. Declare the truth and your knowledge herein.

12th. Whether or no said Spring obtained the major part of the means expended and advanced in erecting the building inquired after by the last interrogatory, from the firm of Sutton, Griffith & Co., or a considerable portion of the amount. Declare the truth and your knowledge herein.

13th. Whether or no said Spring was largely involved in debt for borrowed money at or about the 23d day of November, A. D. 1853. Declare the truth and your knowledge herein.

14th interrogatory. Whether or no did James P. Spring, one of the witnesses named in the title of these interrogatories, is a brother of defendant Nicholas P. Spring, and an attorney at law; if yea, state whether or no he, the said James P. Spring, spoke to John Gardner, hereinbefore inquired after, to bid for said lots or any of them at the sheriff's sale under the executions hereinbefore inquired after, for or on account of the defendant Nicholas P. Spring. Declare the truth and your knowledge herein.

Lastly. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WALKER & GREEN, Complainants' Solicitors.

We hereby acknowledge service of notice of the filing of the foregoing interrogatories, this 12th of August, 1856.

S. F. CLARK, Att'y.

Depositions of witnesses produced, sworn and examined on the 28th day of August, in the year of our Lord eighteen hundred and fifty-six, at the office of the clerk of the Circuit Court of Sebastian County, in the town of Greenwood, in the county of Sebastian, in the State of Arkansas, by virtue of a commission issuing from the District Court of the United States for the Western District of Arkansas, to John Carnall, directed, for the examination of witnesses in a certain cause depending in said court, wherein Milton J. Lukins and John Linton, citizens of the State of Pennsylvania,

are plaintiffs, and Thomas A. Aird and Nicholas Spring, citizens of Arkansas, are defendants.

Richard P. Pulliam, of the county of Sebastian, in the State of Arkansas, aged about forty years, or thereabouts, being produced, sworn, and examined on behalf of the complainants, deposeth as follows:—

1. To the first interrogatory he answers as follows:—

I am not personally acquainted with either of the complainants in the title of these interrogatories named; I am personally acquainted with both the defendants; I have known defendant Spring for ten or twelve years, and have known defendant Aird for four or five years.

2. To the second interrogatory he answers as follows:—

I know the town lots situate in the city of Fort Smith, in Sebastian County, in the State of Arkansas, numbered one, two, five, six, seven, eight, and nine, in block P, inquired after by that interrogatory, and have known them for four years. On lots five and six there were, on the twenty third of November, 1853, and still are erected, a dwelling-house and smoke-house

R. P. PULLIAM.

JOHN CARNALL, Com'r.

and which are enclosed by a neat and substantial fence. These are all the improvements of these lots of which I have any distinct recollection at this time. The improvements on these two lots on the twenty-third November, 1853, were of the value of about $1200. Lots numbers one and two have no improvements on them, nor had they any of which I have any recollection on the 23d November, 1853; lots numbered seven, eight, and nine, are enclosed by a fence, and upon one of said lots there is a log dwelling-house. These improvements were there on the 23d of November, 1853, which were worth at that *that* time about two hundred dollars.

3d. To the third interrogatory he answers as follows:—

Lots numbered one and two, inquired after by this interrogatory, were worth on the 23d November, 1853, about one hundred and twenty-five dollars each; lots numbered five and six thereby inquired after and the tenements and appurtenances thereunto belonging and appertaining, were worth on the 23d November, 1853, fourteen hundred and fifty dollars; lots numbered seven, eight, and nine, thereby inquired after *after*, were worth on the 23d November, 1853, with the appurtenances and improvements thereunto belonging, five hundred dollars. I think I have put a low estimate on these lots and improvements.

4th. To the fourth interrogatory he answers as follows:—

I know that defendant Aird has been in

R. P. PULLIAM.

JOHN CARNALL, Com'r.

possession and occupied the dwelling-house on said lots numbered five and six since the 23d November, 1853, and I believe he has occupied the same ever since that time until within the last six or eight weeks. I have no knowledge of said Aird having occupied or been in possession or in receipt of the rents and profits of any of the other lots inquired after by this interrogatory.

5th. To the fifth interrogatory he answers as follows:—

All I know in relation to the matters inquired after by this interrogatory is this: On or about the 23d of November, 1853, I met with defendant Spring at the stores of Messrs. Sutton, Griffith & Co., of the city of Fort Smith. He had in his hands a considerable sum of money, and remarked to me or some one else present, that he had bought Thos. Aird's lots, and had borrowed the money (meaning) the money he had in his hands, of Sutton, Griffith & Co. to pay for them, but that he had managed to do without using it and was going to return it. I do not know the amount of money borrowed by the said Spring of Sutton, Griffith and Co. In this conversation said Spring had reference to the same lots in the pleadings in this cause mentioned, for I inquired of him at the time if they were the lots he had purchased of defendant Aird, and he answered in the affirmative.

6th. To the sixth interrogatory he answers as follows:—

All I know in relation to the matters inquired after by this interrogatory I have stated in my answer

R. P. PULLIAM,
JOHN CARNALL, Com'r.

to the fifth interrogatory. I never heard any conversation between said Spring and any other person except the one above mentioned, in relation as to money he had borrowed of Sutton, Griffith & Co., with which to pay said Aird for the said lots.

7. To the seventh interrogatory he answers as follows:—

The late firm of Perry & Aird in the pleading in this cause mentioned are insolvent. I do not know about what time they first became insolvent, but they were in failing circumstances when defendant Aird conveyed the said lots to defendant Spring.

8th. To interrogatory eighth he answers as follows:—

John Gardner was present at the sale of said lots by the sheriff under the several executions mentioned in the pleadings in this cause on the 19th February, 1855, and bid for some of said lots, and I believe he bid for each and all of them. I do not know whether he bid for them for or at the instance of defendant Spring or not.

9th. To the ninth interrogatory he answers as follows:—

I am entirely ignorant of the matters inquired after by this interrogatory, and cannot say whether defendant Spring ever did make a showing of his pecuniary condition or an estimate of the value of his property, or give a schedule thereof or not.

10th. To the tenth interrogatory he answers as follows:—

I do not know of my own knowledge that defendant Spring was ever insolvent, but I know he was reputed to be insolvent some ten or twelve years ago.

11th. To the eleventh, twelfth, thirteenth, and fourteenth interrogatories, he answers as follows:—

R. P. PULLIAM,
JOHN CARNALL, Com'r.

I am entirely ignorant of the matters inquired of by these interrogatories, except in this, that I know that James P. Spring is a brother of Nicholas Spring, and an attorney at law—of all and every other matter and thing inquired after by the said 11, 12, 13, and 14th interrogatories, I am, as already stated, totally ignorant.

Lastly. To the last interrogatory he answers as follows:—

At the August term, A. D. 1855, of the Circuit Court of Sebastian County, in the State of Arkansas, defendant Thomas A. Aird filed and exhibited on the chancery side of that court a bill in chancery against the said complainants, Milton J. Lukins and John Linton, his said co-defendant, Nicholas Spring, *and this defendant*, together with his affidavit thereto annexed in support of the matters and things therein alleged, praying for an injunction to stay certain proceedings instituted *to stay certain proceedings instituted* on the law side of that court by said Lukins and Linton, for an order for the sheriff to put them in possession of lots numbered 5 and 6 inquired by the preceding interrogatory, and that the said Aird in and by his said bill alleged, among other things, that said lots numbered five and six were worth $2500 at the time they were sold by the sheriff under execution, on the 19th day of February, 1855, a certified copy of which said bill and affidavit is hereunto annexed marked "A." I have read the original now on file and of record in said office, and know that the said bill is in the handwriting of Solomon F. Clark, Esq.,

R. P. PULLIAM,
JOHN CARNALL, Com'r.

one of the said defendant's solicitors in this cause, and that the signature of defendant Aird to said affidavit is genuine and in his own writing. I know that the said lots numbered 5 and 6 have not advanced in value since the 23d of November, A. D. 1853, and that they would not have sold for as much on the 19th February, 1855, as they would at the time they were conveyed by defendant Aird to his co-defendant Spring. The value of the real estate in the city of Fort Smith was at its maximum about the time of the conveyance by Aird to Spring in 1853, perhaps it had slightly declined at that time, but it has been declining in value ever since, or from about the beginning of 1854. And further this deponent sayeth not.

R. P. PULLIAM,
JOHN CARNALL, Commissioner.

State of Arkansas, *sct.*

Be it remembered, that at a Circuit Court which was began and held at the court-house in the city of Fort Smith, in and for the county of Sebastian, in the State of Arkansas, on the third Monday of August, A. D. 1855. Present the Hon. John J. Clendennin, Judge of the Fifth Judicial Circuit, on interchange with the Hon. Felix I. Batson, Judge of the 4th Judicial Circuit of said State, the following, among other proceedings, were had in chancery, to wit: August 28th, 1855. This day Thomas A. Aird filed in open court his bill in chancery, which is in words and figures following, to wit:—

In the Circuit Court of the county of Sebastian. At the August Term, 1855.

To the Honorable J. J. Clendennin, sitting as judge of said court in chancery.

Thomas A. Aird, a resident of said county, brings this his bill of complaint against Milton J. Lukins, John Linton, who are not residents of this State, Richard P. Pulliam, and Dr. Nicholas Spring, who are residents of said county; and thereupon your orator declares and says:—

That on the 23d day of November, 1853, the said defendant, Nicholas Spring, there being seised in fee simple absolute of the following described lots of land, to wit: Lots numbered five and six in block numbered or lettered P, in the city of Fort Smith, as the same are marked and designated in the plat and plan of said city. Your orator entered into a verbal agreement with him to lease the said lots, with the buildings and improvements thereon, by which agreement your orator was to occupy the said premises *so long as he might* WANT THE SAME, and he, the said defendant, might desire to let the same, to rent at the monthly rent of eight dollars per month. That in pursuance of such agreement, your orator has ever since possessed and occupied the said premises, *and now is in possession of the same as tenant to the said defendant, Dr. N. Spring*, paying rent to the said defendant after the same rate, which said rent is due at the end of each and every month. And your orator represents that he has erected and cultivated upon the said premises a large garden *embracing* a variety of vegetables and fruits which cannot now be taken from the premises without great loss to your orator, and all of which must inevitably be lost to him, and he in other respects be materially injured by being forced to give up possession of the said premises at the present time.

And your orator further represents, that on the 3d day of August, 1854, at the August term of this court of that year, the said defendant, Richard P. Pulliam, as the assignee of the said defendant, Milton J. Lukins, by the judgment of this court recovered against

your orator and William H. Norton, and William W. Perry, as late partners in trade under the firm, name, and style of Norton, Perry & Aird, the sum of $809 23 debt, and $41 98 damages, and his costs taxed at $4 74. That on the same day the said Pulliam as assignee of Wilson, Brother & Co., by the judgment of the same court recovered in another action against the same defendant the sum of $1549 29 debt, and $82 60 damages, and his costs taxed at $4 99; and that on the 18th of Dec. of the same year, executions issued upon said judgments, directed to the sheriff of said county of Sebastian; and on the 26th day of the same month the sheriff of said county, to whom said writs of execution were directed, being, as your orator is informed and believes, ordered and directed *sale do* by the attorneys who had control of the said judgments merely to harass and injure your orator, they well knowing at the time that the said premises belonged to the said defendant Spring, and that your orator was only tenant under him, seised and levied the said executions upon the said lots of land, and the buildings and improvements thereon; and on the 19th day of February, A. D. 1855, that being the first day of the last term of this court, between the hours of judicial sales, having first given notice by advertisement, pursuant to law offered the said lots for sale at public auction, at the court-house door of said county. That the *bystanders* and spectators at said sale, because they knew that the said lots of land belonged to the said defendant Spring, and that no good title could be obtained by purchase under the said executions, refused to bid, and did not bid for the said lots, but that the said attorneys for the judgments, in favor of the said defendants, Milton J. Lukins and John Linton, merely to harass your orator by turning him out of possession of said lots, and thereby forcing him to pay said judgments, bid off said lots for and in the names of the said defendants, Lukins, at the price of $135; and your orator alleges *the said lots were worth at the time they were so sold, the sum of* $2500, and that the said sheriff afterwards executed a deed of conveyance of the said lots to the said defendants, which said deed bears date the 24th day of February, 1855, and that the same was duly acknowledged according to law.

And your orator further represents that said defendants, Milton J. Lukins and John Linton, by their attorneys, Walker & Green, at the present term of this honorable court, on the 22d day of this present month, filed in this honorable court, and on the law side thereof, their petition in writing, which, after selling out the said judgments, executions sale of said lots, sheriff's deed thereto, and alleging the payment of the purchase money and the possession of said lots by your orator, and other matters necessary in law to entitle them to the possession of said lots, they pray for a rule of this hon. court directed to your orator to appear and show cause, if any he can, why an order shall not be made directing the sheriff to put your orator out of the possession of the said premises, and

to put the said petitioner into possession thereof as by the said petition, a copy of which is herewith filed, marked Exhibit "A," and prayed to be taken as a part of this bill, reference thereunto being had will more fully and at large appear.

And your orator further represents that in pursuance of the prayer of said petition a rule of the said court has been granted requiring your orator to appear and show cause accordingly, and that legal notice thereof has been served upon your orator. That such proceedings have been had upon said petition that because of the strict rules of the common law, whereby your orator cannot in that proceeding set up as defence thereto the superior title of the said defendant Spring, and the tenancy of your orator under him. Your orator will be turned out of the possession unless by the timely interference of this honorable court, your orator may have relief in that respect.

In consideration whereof, and forasmuch as your orator is remediless in the premises, except in a court of equity, where matters of this nature are properly cognizable and reliable to the end that the said defendant may, on their corporal oaths, to the best of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters aforesaid, and that your orator may have a writ of injunction issued out of and under the seal of this honorable court, commanding the said defendants, John Linton and Milton J. Lukins, and their solicitors, attorneys, agents, and servants, to desist and refrain from all further proceedings upon the application for possession of said lots made under the said petition until the matters thereof can be heard in a court of equity, and that your orator may have such other such further relief in the premises as shall be agreeable to equity. May it please your honor to grant unto your orator the State's most gracious writ of subpœna to be directed to the said defendants commanding them, &c.

And your orator will ever pray. CLARK & SPRING.

State of Arkansas, County of Sebastian.

I, Thomas A. Aird, do depose and say that I have read the foregoing bill and know the contents thereof, and that the same are true so far as stated on my own knowledge, and, so far as stated upon my information and belief, I believe the same to be true; so help me God. THOS. A. AIRD.

Sworn to and subscribed in open court this 28th day of August, 1855. J. CARNALL, Clerk.

Upon the back of the foregoing bill is the following endorsement, to wit:—

Filed in open court this 28th day of August, A.D. 1855.

JOHN CARNALL, Clerk.

State of Arkansas, County of Sebastian, *ss.*

I hereby certify that the foregoing is truly taken and copied from the records of the proceedings of the Circuit Court in and for said county of Sebastian, in chancery, and that the bill in chancery and the affidavit thereto annexed, of which the foregoing is a true, perfect, and entire copy, is now on file and of record in my office.

In testimony whereof I do hereunto subscribe my name as clerk of said Circuit Court, and affix the seal of said court at my office this 27th day of August, A. D. 1856.

[L. S.] JOHN CARNALL,
Clerk of Sebastian Circuit Court aforesaid.
By J. H. GARDNER, Dep'ty Cl'k.

This is the certified copy of the bill in chancery exhibited and filed on the chancery side of the Circuit Court in and for Sebastian County, by Thomas A. Aird, on the 28th day of August, 1855, and of the affidavit thereto annexed referred to by Richard P. Pulliam in his examination as the document marked "A."

R. P. PULLIAM,
JOHN CARNALL, Com'r.

Upon the back of which is endorsed the following letters and figures, to wit: Filed November, A. D. 1856.

A. McLEAN, Clerk.
Com'r CARNALL.

Fees, $

Saturday morning, 9 o'clock, 21st November, A. D. 1857, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON, Complainants, vs. THOMAS A. AIRD and NICHOLAS SPRING, Defendants. } In Chancery. No. 2.

Ordered that this cause stand continued until the next term of this court.

In the District Court of the United States for the Western District of Arkansas, at the May term, A. D. 1859.

MILTON J. LUKINS and JOHN LINTON, Complainants,
vs.
NICHOLAS SPRING and THOMAS A. AIRD, Defendants.

And now comes the said defendant Spring, and moves the court here to set aside the order heretofore made setting this cause for hearing, and permit him to file his answer to said complainants' amended bill, and for cause for setting aside such order this de-

fendant represents that upon filing his answer to the complainants' original bill of complaint herein, the complainants filed their amended bill, and the defendants as well as the defendants' solicitors then residing in Fort Smith, in Sebastian County, the attorneys or solicitors for the complainants sent a notice of the filing of said amended bill to them as to their solicitors, which said notice contained what purported to be a statement of the matters alleged in said amended bill, that this defendant and the said defendant Aird made out their answer to the amended bill by such statements contained in said notice, and fully answered all the matters therein stated to be in the said bill, but without seeing or referring to the said bill itself. But he alleges that some of the material allegations in the amended bill were not contained in the statements in the notice so sent to him, and especially nothing was therein stated as to the allegations in the bill alleging that by said deed of conveyance of 23d November, 1853, two additional lots, Nos. one and two, in block P, were also conveyed to this defendant by said Aird, and which were not contained in the original bill of complaint, whereby the said allegations remains wholly unresponded to by said answer, as well as other allegations contained in said bill and not stated in said notice, and against all of which said allegations, by reason of the omission thereof in said notice, and no other, this defendant not only remains wholly undefended as to such allegations, but is involved in an inconsistency between the implied truth of such allegations unanswered, and the statements in his answer to the original bill, and he states that supposing the said notice to contained a statement of all the material allegations in said amended bill, and that the same were fully answered, he did not discover his mistake, and he has reason to believe that his solicitors did not discover the mistake until the present term of this court. He therefore prays your honor to set aside the order setting this cause for hearing, and to permit him to withdraw his said answer made jointly with the said defendant Aird to said amended bill, and to permit him to file his full and several answer to said amended bill.

CLARK & SPRING, Solicitors.

State of Arkansas, County of Sebastian.

I, Nicholas Spring, do depose and say that the matters and things in the foregoing motion contained, are true in substance and in fact. NICHOLAS SPRING.

Sworn to and subscribed before me, an acting and *and* duly commissioned justice of the peace within and for said county, this 24th day of May, 1859. CHARLES PERKINS, J. P.

Upon the back of which is endorsed the following letters and figures, to wit: Filed in open court, 25th May, A. D. 1859.

A McLEAN, Clerk.

Wednesday morning, 9 o'clock, 25th May, A. D. 1859, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

In Chancery. No.

MILTON LUKINS and JOHN LINTON, Complainants,
vs.
THOMAS AIRD and NICHOLAS SPRING, Defendants.

And now on this day come the defendant, Nicholas Spring, and filed his motion in writing, under oath, to set aside the order heretofore made herein setting this cause for hearing, and to permit him to withdraw his answer to said complainants' amended bill heretofore filed, and to file answer to said amended bill for certain causes in said motion contained.

Friday morning, seven o'clock, May 27th, A. D. 1859, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

In Chancery.

MILTON J. LUKINS and JOHN LINTON, Complainants,
vs.
NICHOLAS SPRING and THOMAS A. AIRD, Defendants.

And now at this day come as well the said complainants by Walker and Green, their solicitors, as the said defendants by Solomon F. Clark, their solicitor, and argued the motion heretofore filed by said defendants for leave to file their amended answer to the amended bill heretofore filed by said complainants in this cause, which was thereupon submitted to the court, on consideration whereof it appears to the court that according to the order of proceeding, and the rules and practice in courts of equity, the answer of said defendants to said amended bill now in the present stage of the proceedings in this cause to be amended, and that no sufficient reason has been shown to authorize the court to admit the same, and the court doth therefore refuse the said motion, and the defendants except to the opinion of the court refusing their said motions, and produce here their bill of exceptions to said opinion of the court refusing said motion, which bill of exceptions is now here signed and sealed by the court and ordered to be made a part of the record of this cause.

In the District Court of the United States for the Western District of Arkansas, at the May term thereof, A. D. 1859.

MILTON J. LUKINS and JOHN LINTON, Complainants,
vs.
NICHOLAS SPRING and THOMAS A. AIRD, Defendants.

Be it remembered that, on this 24th day of May, 1859, and after this cause had been submitted to the court upon the hearing, the said defendant Spring, filed in court his motion in writing, and under oath to set aside the order setting this cause for hearing, and

permit him to file his answer to complainants' amended bill for certain causes in said motion contained, which said motion is in the letters and figures here following, to wit:—

In the District Court of the United States for the Western District of Arkansas, at the May term, A. D. 1859.

MILTON J. LUKINS and JOHN LINTON, Complainants,
vs.
NICHOLAS SPRING and THOMAS A. AIRD, Defendants.

And now comes the said defendant Spring, and moves the court here to set aside the order heretofore made setting this cause for hearing, and permit him to file his answer to said complainants' amended bill, and for cause for setting aside such order, this defendant represents that upon filing his answer to the complainants' original bill of complaint herein, the complainant filed their amended bill, and the defendants answer as the defendants solicitors then residing in Fort Smith, in Sebastian County, the attorneys or solicitors for the complainants, sent a notice of the filing of said amended bill to them, as their solicitors, which said notice contained what purported to be a statement of the matters alleged in said amended bill. That this defendant and the said defendant Aird, made out their answer to the amended bill by such statements contained in said notice, and fully answered all the matters therein stated to be in the said bill, but without seeing or referring to the said bill itself. But he alleges that some of the material allegations in the amended bill were not contained in the statements in the notice so sent to him, and especially nothing was therein stated as to the allegations in the bill alleging that by said deed of conveyance of 23d November, 1850, two additional lots Nos. one and two, in block P, were also conveyed to this defendant by said Aird, and which were not contained in the original bill of complaint, whereby the said allegations remains wholly unresponded to by said answer, as well as other allegations contained in said bill, and not stated in said notice, and against all of which said allegations by reason of the omission thereof in said notice and no other, this defendant not only remains wholly undefended as to such allegations, but is involved in an inconsistency between the implied truth of such allegations unanswered, and the statements in his answer to the original bill, and he states that supposing the said notice to contained a statement of all the material allegations in said amended bill, and that the same were fully answered; he did not discover his mistake, and he has reason to believe that his solicitors did not discover the mistake until the present term of this court. He, therefore, prays your honor to set aside the order setting this cause for hearing, and to permit him to withdraw his said answer, made jointly with the said defendant Aird to said amended bill, and permit him to file his full and several answer to said amended bill.

CLARK & SPRING, Solicitors.

State of Arkansas, County of Sebastian.

I, Nicholas Spring, do depose and say, that the matters and things in the foregoing motion contained, are true in substance and in fact. NICHOLAS SPRING.

Sworn to and subscribed before me, an acting and *and* fully commissioned justice of the peace within and for said county, this 24 day of May, 1859. CHARLES PERKINS, J. P.

Upon the back of which is endorsed the following letters and figures, to wit:—

Filed in open court, 25th May, A. D. 1859.

A. McLEAN, Clerk.

And thereupon tenders his answer in the letters and figures following, to wit:—

United States,

In the District Court of the United States for the Western District of Arkansas.

The answer of Nicholas Spring to the amended bill of complaint of Milton J. Lukins and John Linton.

This defendant saving and reserving, &c., for answer to said amended bill, or so much, &c., answering says—

That the said deed of conveyance made by Thomas A. Aird to this defendant, dated the 23d day of November, 1853, mentioned in the complainants' original bill, contains lots Nos. 1, 2, 5 & 6 in block letters P, in the city of Fort Smith, and all of these lots, *i. e.*, lots one, two, five, and six, were conveyed to this defendant by said deed, the said deed expressing the same to be for the consideration of $2500, and which said deed of conveyance is exhibited with and made a part of said complainants' original bill.

He alleges that in making his answers to the original bill the said deed was not nor was the exhibit thereof before him, and he did not notice the circumstance that all the lots mentioned in the deed were not contained in the allegations and charges in the bill, but on the contrary, supposing the object and prayer of the bill was to have the deed set aside as to all the property therein contained, instead of lots Nos. 5 & 6, simply he was misled by the bill as to the enumeration of the lots contained in the deed, and therefore that in stating in said answer that the amount actually paid for said lots 5 & 6, and the lots for which said bond was assigned to him, was the sum of one thousand dollars in cash, and one year's rent of the said lots, and a medical bill, amounting in all to the sum of $1200, this defendant intended that that amount was paid for all the lots conveyed by said deed and the assignment of said bond, *i. e.*, lots one, two, five, six, seven, eight, and nine, in said block letter P, not noticing that said lots one and two were omitted in the enumeration; and also the said allegations in said answer as to the

value of the lots mentioned in the original bill, and all other statements having reference to said lots, this defendant really intended all the lots mentioned in said deed and said bond, not noticing but what the whole of said lots conveyed by said deed were enumerated; and this defendant in answer to the said amended bill reiterates that the said sum of twelve hundred dollars was the full value of all of said lots at that time, or nearly so, and he thinks that said Aird would have found it difficult to have sold them for more at that time, although, as there was no definite standard of value for such lots, it is impossible to say exactly what they were worth, but he positively denies it to be true that that sum was not equal to one-third of the value of the whole of said lots, or that it was not as much as lots 5 & 6, with their improvements, were worth, as the complainants have alleged in their amended bill.

This defendant further answering admits, that at the time of the assignment of said bond for said lots, 7, 8, & 9 to him, the full amount due for the purchase of said lots mentioned in the condition of said bond, had been paid, and that this defendant obtained a deed from Capt. John Rogers, the obligor in said bond, after the assignment to him.

He alleges that he is informed and believes that said Thomas A. Aird was not, at the time of the sale of said lot to this defendant, engaged to be married to his present wife, or to any one else, and he positively denies that the sale of said lots to this defendant, or that the execution of said deed and the assignment of said bond, or either of them, was designed or intended to create a secret trust for the benefit of said Aird's intended wife, or any one else; on the contrary, he alleges that such allegation is false in every particular; on the contrary, he alleges that such sale and purchase was made in good faith for the consideration aforesaid, which was paid in good faith, and that such deed and assignment was designed and intended to convey in good faith to this defendant the full and absolute interest in and to said lots.

And he further says, that he does not now recollect whether before the assignment of said bond to him, he made any inquiry of said Rogers respecting the payment of the money due him, the said Rogers, on the said bond, or as to how much had been paid thereon, but his present impression is that he did not make any such inquiry, but took the word of said Aird for it that the full amount had been paid.

And this defendant insists that having purchased the said lots in good faith, and paid a fair consideration for them, and received a complete title thereto, and especially having reason at the time, and at all times, to believe and in fact to know that the money so paid by him for said lots was appropriated in good faith by the said Aird, in such manner as to accrue to the benefit of such creditors as he then had, and without any knowledge on his part, or any

reasonable ground whatever to suspect that said Aird would thereafter fail and become insolvent.

And having fully answered the said complainants' amended bill, he prays to be hence discharged with his reasonable costs.

NICHOLAS SPRING.

State of Arkansas, County of Sebastian.

I, Nicholas Spring, being duly sworn, do depose and say that all and singular the matters and things in the foregoing answer contained and therein stated to be upon my own knowledge, are true in substance and fact, and as to all such matters and things as are therein stated to be upon the information of others, I believe the same to be true. NICHOLAS SPRING.

Sworn to and subscribed before me, an acting and duly commissioned justice of the peace within and for said county, this 24th day of May, 1859.

CHARLES PERKINS, J. P.

And on the 26th day of May, 1859, the said motion was argued by counsel, whereupon on consideration the court overruled the same, and refused to permit the said defendant Spring file his full answer to said complainants' bill of complaint, to which decision of the court the said defendant Spring excepted at the time thereof, and in order to save the benefit of such his exceptions, tendered to the court, here, this his bill of exceptions, and prayed that the same might be signed and sealed and made a part of the record in this cause which is done accordingly.

DANIEL RINGO, [SEAL.]
U. S. Judge for the Western District of Arkansas.

Upon the back of which is endorsed the following letters and figures, to wit: Filed in open court May 27th, 1859.

A. McLEAN, Clerk.

Monday morning 10 o'clock, May 21st, A. D. 1860, court met pursuant to adjournment. Present the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON,
Complainants,
vs.
NICHOLAS SPRING and THOMAS A. AIRD,
Defendants.

This day the complainants filed by consent of defendants' solicitors, the affidavit of William Walker and Albert Hood, stating the present value of the premises in controversy to be of the value of twenty-five hundred dollars.

In the United States District Court for the Western District of Arkansas. May Term, 1860.

LUKINS and LINTON, Complainants,
vs.
AIRD and SPRING, Defendants.
} Bill in Chancery.

We, William Walker and Albert Hood, do solemnly swear and make oath, that lots numbered 5 and 6 in block P., and lots numbered 7, 8, and 9, in the same block in the pleadings in the above entitled cause mentioned, are at this time of the value of twenty-five hundred dollars. Sworn to and subscribed in open court this 21st day of May, A. D. 1860.

W. WALKER,
A. HOOD,
JOHN B. OGDEN, Cl'k.

Upon the back of which is endorsed the following letters and figures, to wit: Filed in open court May 21st, 1860.

J. B. OGDEN, Cl'k.

Tuesday morning, June 5th, A. D., 1860, court met pursuant to adjournment. Present, the Hon. Daniel Ringo, Judge.

MILTON J. LUKINS and JOHN LINTON,
Complainants,
vs.
THOMAS A. AIRD and NICHOLAS P. SPRING, Defendants.
} In Chancery.

This cause came on to be heard at a former term of this court, on the original bill and the amendment thereto of said complainants, the answer thereto of the said defendants; the replications of said complainants to the answers to said original bill and amendment, the exhibits mentioned and referred to in said pleadings, and the depositions of witnesses taken and filed in this cause on the part of said complainants, to wit: the deposition of John Gardner, William W. Perry, John Rogers, Henry Beckle, Richard Pulliam, William Walker, and Albert Hood, and the record annexed to the deposition of the witness Richard P. Pulliam, and was argued by counsel as well on the part of said complainants as of said defendants, and submitted to the court; on consideration whereof, it appears to the court here, that the answers of said defendants in reference to the allegations contained in said original bill and the amendment thereto; denies the material facts upon which the equitable rights claimed in the premises by the said complainants in their said pleadings depend; and that the facts so denied are not established by the proofs in the cause in such manner as to entitle the complainants to the relief prayed; whereupon the court here doth adjudge, order, and decree, that the said bill of complainants be, and the same is hereby dismissed, and the said complainants do

pay to said defendants their costs in and about this suit expended to be taxed, and have execution thereof as upon a judgment at law, and that the said parties go hence without day. And thereupon the said complainants by their solicitors aforesaid, pray an appeal from the decree aforesaid of the court here to the Supreme Court of the United States, and it appearing to the satisfaction of the court here from the affidavit of William Walker, and Albert Hood, heretofore filed by consent of defendants' solicitors, and the pleading and proofs in this cause, that the matter in controversy in this cause exceeds the sum or value of two thousand dollars; and the said complainants' solicitors having filed a bond this day, executed by William Walker and Joseph J. Green, to the said defendants in the penal sum of $500, conditioned that if the said complainants shall prosecute their said appeal to effect and answer all damages and costs if they fail to make good their plea, which is by the court here deemed good and sufficient and approved, the appeal from the decree aforesaid to the Supreme Court of the United States is granted.

MEMORANDUM.—The defendants filed their joint answer to the amendment to complainants' original bill on the 5th of January, 1856, and the complainants filed their replications to the defendants' answers to the original bill and amendment on the same day, all of which are omitted in the order-book, and the same is by order of the court here entered of record now for them.

District Court of the United States for the Western District of Arkansas. In Chancery.

MILTON J. LUKINS and JOHN LINTON, Complainants, vs. THOMAS A. AIRD and NICHOLAS P. SPRING, Defendants. } On Appeal.

Know all men by these presents that we, William Walker and Joseph J. Green, are held and firmly bound unto the above named Thomas A. Aird and Nicholas P. Spring in the sum of five hundred dollars, to be paid to the said Aird and Spring, their executors or administrators. To which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 5th day of June, A. D. 1860. Whereas, the above named Milton J. Lukins and John Linton have prayed an appeal from the decree of said District Court in the above entitled cause rendered and pronounced to the Supreme Court of the United States to reverse the said decree. Now, therefore, the condition of this obligation is such, that if the above named Milton J. Lukins and John Linton shall prosecute their said appeal

to effect, and answer all damages and costs if they shall fail to make good their appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. WALKER. [SEAL.]
J. J. GREEN. [SEAL.]

Sealed and delivered in presence of
GEO. CROSS.

Upon the back of which is endorsed the following letters and figures, to wit: Filed in open court June 5th, 1860.

JOHN B. OGDEN, Cl'k.

I do hereby approve the within bond.

DANIEL RINGO, Judge.

United States of America, Western District of Arkansas, *ss.*

I hereby certify that the foregoing is truly taken and copied from the records of the proceedings of the District Court of the United States for the Western District of Arkansas.

In testimony whereof I have hereto subscribed my name and affixed the seal of said court at my office this 30th day of August, A. D. 1860.

[L. S.] JOHN B. OGDEN, Clerk.

Filed 12th January, 1861.

In the Supreme Court of the United States,

DECEMBER TERM, 1867.

No. 25.

LUKINS AND LINTON, APPELLANTS, VS.
AIRD AND SPRING, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT COURT OF ARKANSAS.

ARGUMENT FOR APPELLANTS.

ARGUMENT FOR APPELLANTS.

The reservation of the possession and use of the premises for one year free of rent, rendered the conveyance fraudulent as to creditors and void. It was the creation of a secret trust for the benefit of the grantor, at least, to the extent of the interest reserved. The grantor's right to the possession was undeniably subject to the payment of his debts, and the deed covering that right was clearly a barrier—a hinderance in the creditor's way. If such a conveyance can stand good as against creditors, why would not a conveyance absolute, executed with the understanding between the parties, that the grantee should retain possession for ten, twenty or fifty years, be equally valid? Again: if the right of the grantor to retain possession for one year be a valid consideration *pro tanto*, there can be no reason why the reservation of the right of possession for a given number of years should not constitute the entire consideration.

"Such conveyances are fraudulent and void, since the debtor thereby secures a benefit to himself at the expense of the creditors." *Wooten v. Clark*, 23 *Miss.*, (1 *Cush.*) 75; *Brown v. McDonald*, 1 *Hill*, 303; *McMeekin v. Edmonds*, *ib.* 292; *Hundley v. Webb*, 3 *J. J. Marsh.*, 645-648.

"An assignment by a debtor in failing circumstances, containing a reservation of property for his own benefit for a *limited time*, is void in toto." *Mackie v. Cairns*, *Hopkins*, 373.

"Any conveyance which materially hinders and delays creditors in the assertion of their rights, especially if there is any reservation of a benefit to the grantor, is fraudulent and void as to creditors." *Arthur v. Com. and Railroad Bank*, 9 *S. & M.*, 394.

"A deed of land, with a secret trust securing a substantial interest to the grantor, is fraudulent and void as to creditors.' *Towle v. Hoil*, 14 *N. H.*, 61; *Caldwell v. Rose*, 1 *Smith*, 190.

"A conveyance absolute upon its face, attended with a secret trust, is fraudulent and void as to creditors. The trust being admitted or proved, the fraud is an inference of law, which the court is bound to pronounce." *Paul v. Croker*, 8 *N. Hamp.*, 288.

The reason of the rule, that possession and use, inconsistent with the terms and professed objects of the deed, make the deed, *per se*, fraudulent and void as to creditors, proceeds upon the irresistable inference of a secret trust or of fraud. (1 *Smith's Lead Cases*, *p.* 1.) In this case, the grantor is proved to have held possession from the 23d of November, 1853, the date of the deed, until the spring of 1856, and it is admitted in the answer by both parties, that the grantor occupied the premises in pursuance of a parol agreement incompatable with the deed: So the fraud is established both by the proof and the admission.

In New Hampshire, in the case of *Smith v. Lovell*, (6 *N. Hamp.* 67,) a debtor in embarrassed circumstances made an absolute conveyance of his real estate, and remained in possession only fourteen days after the conveyance; and it was held, that these circumstances alone, unexplained, afforded *prima facie* evidence

that the conveyance was made to defraud creditors. See also *Peck v. Land.*, 2 *Kelly*, 1.

"Inconsistency of possession renders the deed fraudulent in law, and absolutely void, without regard to intention; mere possession by the grantor is *prima facie* evidence of fraud: because possession is always indicative of property in, or of a trust for, the person possessing." Per *Cubell J.*, in ———. (See also 7 *Paige's Ch. Rep.*, 94.)

"The circumstance of leaving the grantor in possession of the premises, supplies the place of a provision to that effect in the conveyance. The law presumes an understanding between the parties; infers the existence of a secret trust; and, so far as the rights of creditors are affected, the deed is void." *McBee v. Cox et al.*, 1 *Spears*, 195.

Is there any thing either in the pleadings or the proofs in the case tending to rebut or repel the presumption of a secret trust? There is not; on the contrary, the admissions in the answer show the existence of a trust, and the answer and the evidence clearly and conclusively establish a fraudulent intent on the part of the defendants. But before proceeding to discuss the question of fraud, we will here remind the court that a fraudulent intent to commit fraud is not in all cases necessary in order to render a conveyance fraudulent and void as to creditors. Thus in the case of a voluntary conveyance without consideration, the deed is void as to existing creditors, although there was no intent to commit fraud. See *Harrison v. Buckner*, 4 *Dana*, 251; *Sexton v. Wheaton*, 8 *Wheat.*, 229.

So in case the conveyance has the effect to hinder or delay creditors, it is made void by the statute whether it was made with intent to defraud or not.

"Fraud in fact, or an express intent to commit fraud, is not necessary in order to render a conveyance fraudulent as against creditors. It is sufficient if the effect of the conveyance is to delay or hinder creditors in the collection of their debts." *Buck v. Sherren*, 2 *Douglas;* and see *Adams' Eq.*, 145-6-7; *Graham v. Chapman*, 11 *Eng. L. & E.*, 502.

"If a secret trust be created for the benefit of the grantor, the deed is void, though the grantee give a full consideration." *Farmer's Bank of Va., v. Douglas*, 11 *S. & M.*, 469.

"And it is not sufficient that it is upon a good consideration or *bona fide*. It must be both, and if not, it is void as to creditors. The words 'good consideration' in the statute, must be understood to include valuable as well as good." *Glenn v. Randall*, 2 *Md. Ch. Decis.*, 220.

We shall now point out and discuss the evidences of the fraudulent intent.

The firm of Norton, Perry & Aird, were embarrassed in their circumstances at the time of the execution of the conveyances, and subsequently failed and became insolvent, as is shown by the deposition of Perry, the senior partner. Aird first proposed the sale, and gave it as a reason for desiring to sell, that he was in need of money to pay his debts. Spring offered $1,000. Aird rejected the offer, saying that the property had cost him $1,900. Finally, they settled the price at $1,200, and Spring paid $1,000 in money, $60 or $70 in a medical bill, and the residue, $130 or $140, he paid by a verbal promise to let Aird have the use of lots 5 and 6, for one year free of rent, and to rent them to him at the same rate for an indefinite period. Spring instructed the scrivener to draft the conveyances, and directed him to insert $2,500 as the consideration in the deed, and $350 as the consideration in the assignment of the title bond. The instruments were prepared accordingly and executed. The $1,000 was paid in the recorder's office at the time of the acknowledgment of the execution of the conveyances. On the same day Spring borrowed a considerable sum of money of Sutton, Griffith & Co., for the purpose, as he said at the time, of paying Aird for the lots; and returned the same money on the same day, saying that he had managed to do without it. Spring has a distinct recollection of all the circumstances connected with the transaction except the important one of his having borrowed the money from Sutton, Griffith & Co., and he will neither admit or deny it Aird was a single man at the time of the sale, but married directly

afterwards, and occupied lots 5 and 6 from the 23d of November, 1853, until the spring of 1856. The use of the premises for one year, with the privilege of renting them, etc., was the principal inducement with Aird, as he states in the answer, for making the sale to Spring. Both Aird and Spring contended before this suit was brought, and now insist in their answer, that the lots 5 and 6 was Aird's homestead, and therefore exempt from the payment of the debts they are sold to satisfy. Both Aird and Spring appeared before the Sebastian circuit court and opposed complainant's application for the order to dispossess Aird. All these facts appear in the answer.

But by far the strongest and most conclusive evidence of the fraudulent designs of the defendants are yet to be mentioned. They are the inaccuracies, evasions and contradictions in the answers, and the absurdity and improbability of the explanations they give of some of the most suspicious circumstances charged in the bill. The defendants in their answer to the original bill, say that $1,200 was the consideration given for lots 5, 6, 7, 8 and 9, and that that was about what they were worth. By reference to the amendment to the original bill and the exhibits and the answer to the amendment, it will be found that two other lots, 1 and 2, not mentioned in the original bill, and which are proved to be worth $100 each, were included in the same deed with lots 5 and 6.

In the bill for an injunction to enjoin the execution of the order for possession, which was sworn to, Aird alleges that he had been in possession of lots 5 and 6 ever since the 23d of November, 1853, (the date of the fraudulent conveyances) under a verbal agreement, by which "he was to occupy the premises *so long as he might want the same, and the defendant might desire to let the same, at the monthly rent of* $8 *per month, and that the premises, lots* 5 *and* 6, *were then worth* $2,500." In the answer to the original bill in this case, the defendants say that by the terms of the sale, Aird was to have the use of the premises *one year free of rent, and at the "yearly rent of* $100 *after the first year.*" In another part of the answer, they say that the

medical bill amounting to $60 or $70, and the use of the place, which formed a part of the consideration of the lots, were together estimated at $200, and that Aird was to have the privilege of renting them at the *same* rate after the first year: that is, at $140, if the medical bill amounted to $60, but at $130 if it amounted to $70. (It is strange that the defendants did not ascertain the exact amount of that medical bill before they answered, because the rates of the annual rents after the first year depended upon it!!) And again, in their answer to the 4th interrogatory, we find a different statement from the one just noticed in relation to the *time* Aird was to have the use of the premises free of rent, and the terms upon which he was to occupy them after the first year. There they say, "And it was finally agreed that Spring should give Aird $1,000 in cash, receipt a medical bill, amounting to $60 or $70, and let him have the use of the *property* (?) FOR THE YEAR 1854, and that the medical bill and rent were together estimated at $200." "And it was further agreed at the time, that Aird should, if he should so desire, have the use and occupation of lots 5 and 6 *after the year* 1854, so long as Spring retained the same and might not want them for his own use, *and this was the full consideration paid for the lots*." This last statement, it will be perceived, fixes the year 1854 as the period Aird was to occupy the premises, instead of one year from the 23d of November, 1853, as stated in another part of the answer and in Aird's "injunction bill," and leaves the contract of sale silent as to the annual rent after the first year.

It may be said that these discrepancies are not glaring, and therefore attributable to the carelessness of the draftsman; but this is no excuse for the defendants, whose duty it was to give the answer a careful and critical perusal and consideration before swearing to it. It is impossible to ascertain with sufficient certainty to enable a pleader to draft a special count in assumpsit upon the supposed contract of sale, by reading the answer. Recourse to the parties would be necessary for the purpose of ascertaining which of the several statements was the correct one.

It is scarcely necessary to comment upon this part of the answer.

"When a fact is charged which is in the defendant's knowledge, as if done by himself, he must answer positively, and not as to his remembrance or belief only; and if he answers that he has no recollection of the fact, and neither admits or denies it, it will be considered evasive and tantamount to an admission." 2 *Daniel Ch. Pl.*, 830; *Taylor v. Luther*, 2 *Sumner*, 228. And this rule is laid down and ably discussed in all its bearings in *Marshall v. Green*, 24 *Ark.*, 410; and to this sound exposition of the doctrine the attention of the court is respectfully asked.

The idea of Spring, after refusing to admit or deny the charge, for the reason that he had no recollection of it, and then attempting an explanation, is the greatest imaginable absurdity. If he had any recollection of the facts he states by way of explanation, why did he not deny the charge. If he had no recollection of having borrowed the money and of returning the same money on the same day, and of the declarations he made in the presence of Pulliam at the time of returning it, his statements as to the other circumstances, are entitled to no weight. At all events, the testimony of one witness was sufficient to establish the charge. 2 *Dan. Ch. Pl.*, 984.

There are a half a dozen or more badges of fraud here unexplained and not removed, and the defendants, to repel the presumptions of law arising from them, rest upon the naked assertions in their answer. The question is, whether the answer unsupported by proof is sufficient to overcome the presumption of fraud?

In the case of *Hildreth v. Sands*, reported in 2*d Johns. Ch. Rep*, which was a bill filed by a purchaser of real estate under execution, to set aside, as fraudulent, a conveyance made by the defend nt in the execution prior to the rendition of the judgment upon wh'ch the execution issued, the grantee in his answer denied the fraud, and claimed to be an innocent purchaser for a valuable consideration. (The grantor remained in possession as in this case after the execution of the deed, which was one of the admitted badges of fraud.) Chancellor KENT, in delivering the opinion, (at

page 43.) said: "The whole of this account of the payment of a part of the consideration (for above $1300 remains to this day without any pretence of its being paid) is lame and defective, *and ought to have been supported by evidence, and not left to rest upon the allegations in the answer.* The defendant was called upon to meet the charge of an impeached conveyance. The bill was not a mere bill of discovery, but for relief: *to rest, therefore, entirely on the naked assertion of payments, without any proof in support of them, is a circumstance leading to the most unfavorable inference.*"

In *Hendricks v. Robinson*, reported in the same volume, the Chancellor, at page 299, in speaking of an account held by the grantee against the grantor of the impeached deed, which was alleged in the answer to have constituted a part of the consideration, said: "Admitting the account exhibited by the purchaser to be just and true, (*and this is* a concession which he is not entitled to ask without having made some effort to prove his account,) is it probable," etc., etc.

In the case of *Hudgins v. Kemp*, reported in *20th Howard, U. S. S. C. Rep.*, which was a bill to set aside, as fraudulent, a deed to real estate, Mr. Justice NELSON, in delivering the opinion of the court, said: "The deed contained a clause, that the lands should be subject to any judgments that were then a lien upon them; and it was urged, on the argument, that these judgments should be taken into the account, on fixing the amount of the purchase money. But the answer is, *that it does not appear, from any evidence in the case*, that judgments existed against the grantor at the date of the deed." (See *page* 52.)

Again, both defendants deny that Aird was in possession of the premises at the time of the execution of the conveyance, which was on the 23d of November, 1853. Aird swore in his injunction bill, that he was, and Perry, his partner, deposed that he was in possession at and before the time of the execution of the conveyances. "That the sworn statements of Aird whilst in possession are admissible as against Spring, admits of no doubt."

(See *Cow and Hill's note to Phil. on Ev., n.* 452, *p.* 596; *Borland v. Mayo*, 8 *Ala.*, 104.

So that the answer is discredited as to both defendants.

We now come to the inconsistency of the defendants in setting up the homestead law.

They say in their answer, that they admit that *they had alleged before this suit was brought*, and still insist, that lots 5 and 6 were exempt from execution by the provisions of the homestead law!!! If the lots were exempt from execution under the provisions of that law, they certainly belonged to Aird at the time they were sold under execution. They contended prior to the institution of this suit that the premises were exempted from execution! What was their object in doing so? It was to let the creditors know that if they succeeded in having the conveyance cancelled for fraud, Aird could fall back upon the homestead law. That if he was not completely shielded and protected by the one, he was by the other.

"The defendant in a suit in chancery may, in his answer, set up as many defences as he thinks proper. But in a sworn answer he cannot set up two distinct matters, which are so inconsistent with each other that it is impossible that both of them can be true." Such an answer would involve the crime of false swearing, and discredit the entire answer. *Hopper v. Hopper*, 11 *Paige's Rep.*, 46. See also the remarks of Judge CURTIS, in *Russell v. Southard et al.*, 12 *Howard U. S. S. C. Rep., p.* 151. "The least effect justly attributable to such departure from the facts, is to deprive his answer of all weight as evidence."

We will now invite particular attention to the answer to the charge that the payment of the purchase money was colorable and not real, and that Spring borrowed the money of Sutton, Griffith & Co., for that purpose, and returned the same money immediately after making the sham payment.

Aird says that he "has no knowledge or information upon the "subject, and therefore has no belief whatever about it(!!) He "ought to know whether the payment was real or pretended, and "whether the money used was returned to Spring. Spring says

"that he will not deny that such transaction took place as alleged, "but that he has not the remotest recollection of anything of the "sort. He had $1,000, or nearly that amount, at his house on "the day he paid for the lots. He also had some money in the "hands of Sutton, Griffith & Co. *He knows he paid to Aird the "money which he had at his residence*, and if the circums'ances "alleged did transpire, it must have been in this way, that he "obtained a sum of money not knowing the exact amount he had "at home to make up the deficit, and afterwards returned the "balance; or else that he obtained the money of Sutton, Griffith "& Co., thinking it more convenient than to go to his residence "for it, and having occasion afterwards to go home before making "the payment, he took and used his own money and returned the "money he had borrowed or so much as was not necessary to "make up the deficit. That such transactions could never have "occurred in any other way, and as he has no recollection of "them, he is inclined to think they never occurred, although he "*admits it is possible they may be true.*" In reply to the 18th interrogatory, *they both deny that any part of the money paid for the lots was returned to Sutton, Griffith & Co., and say that but a small part paid, if any, was obtained from them.*"

Apart, however, from the contradiction or inconsistency in the defence set up by the answer, it is certainly true, that the "*homestead exemption*" cannot be claimed in this suit. After levy and sale the party is estopped from setting up this claim, if he permitted the levy and sale without asserting it, or notifying the bystanders he so claimed the property. It is a right given the party by law, which he must set up at the earliest opportunity to save cost and further trouble, and if he remains silent and the property is sold it is then too late for him to come forward with this claim. See *Herschledt v. George*, 6 *Michigan*, 456, where this very question is passed on, and *U. S. Digest*, *vol.* 20, *p.* 473-4, (*Homestead* 1) where several other cases are cited. This is in accord with that universal rule pertaining to sales, which precludes a party from setting up a claim when he

has stood by in silence and suffered his property to be sold. 22 *Ark.*, 573, *and authorities.*

In any event, then, the question of the "homestead exemption" cannot be considered in this case.

It is claimed, then, that upon the pleadings and proof the conveyance was fraudulent and should have been set aside, and the decree of the court below in refusing to cancel the deed is erroneous and should be reversed.

Respectfully,

A. H. GARLAND,

Counsel for Appellants.